

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.10.2007

CORM:

THE HON'BLE MR. JUSTICE P. JYOTHIMANI

Second Appeal Nos.314 & 315 of 1994, 41 & 42 of 1997 and 690 & 691
of 1998.

S.A.Nos.314 and 315 of 1994:

- 1.L. Bakthavatsalam
- 2.L. Jeganathan
- 3.R. Manickammal
- 4.Santha Thiyagarajan
- 5.Deena Ranganathan
- 6.S. Padamalochini
- 7.M. Sagunthala

(4 to 7 Daughter of Naidu) ... Appellants in both SAS/
Defendants 4,6, to 11
Respondents 4,6 to 11

Vs.

1. R. Alagiriswamy (died)
2. A. Alagiriswamy
3. V. Kalyanaswamy (died)
4. N.R. Soundararajan
5. L. Venkitupathy (died)
6. K. Muthu Vasikanathan
7. A. Murugesan
8. S. Manavalan
9. P. Lakshmanan
- 10.A. Karunakaran
- 11.K. Kandaswamy
- 12.M. Palaniappan
- 13.Parvathi (died)
- 14.T. Krishnan
- 15.C. Selvaraj
- 16.K. Sundarajan
- 17.G.Natarajan
- 18.V.Marudachalam
- 19.C. Raja
- 20.N.Muralidharan
- 21.P.Mariappan
- 22.Siva Bagiyam
- 23.Visalakshi
- 24.B. Senthamarai kannan
- 25.Ayyammal

26.U. Sami Iyer
27.Sivabakiam
28.Selvaraj
29.Sivakami
30.Muraleedharan
31.Ramesh Babu
32.Ragubathi Raj
33.Kanna Prasad
34.R. Saraswathi
35.Lalithamani
36.Rajeswari
37.Vasanthamani
38.Rajakumar
39.Muralidharan
40.Amirtham Ammal
41.Balasubramanian

(R.34 & 35 are brought on record as
LRs. of deceased 13th respondent) (Vide order dated 12.9.03
in C.M.P.No.7185 to 7187/98)

(R.36 brought on record as LR of
deceased 1st respondent) (Vide order dated 15.2.2005
in C.M.P.Nos.2619 to 2621,
2623 to 2625/05)

(R.37 to R.39 are brought on record
as LR. of deceased 5th respondent) (do and 14912 and 14913/98)

(R.40 & 41 are brought on record as
LRs. of deceased 3rd respondent) (Vide order dated 7.8.2006
in CMA 9148 and 9149/06)

.. Respondents in both SAs/
Defendants

S.A.Nos.41 and 42 of 1997: सत्यमेव जयते

1. Venkitupathy (died)
2. Vasanthamani
3. V.Rajkumar
4. V. Muralidharan

(Appellants 2 to 4 are brought on
record as LR. of deceased sole
appellant) (Vide order dated 20.1.2007
in CMP.3217 to 3222/05)

.. Appellants in both SAS/ D5/R5 in
S.A.No.41/1997 2nd Plaintiff/ 2nd
Respondent / Appellant in S.A.No.42/1992

vs.

- 1.L. Bakthavatsalam
- 2.L. Jeganathan
- 3.R. Manickammal
- 4.Santha Thiyagarajan
- 5.Deena Ranganathan
- 6.S. Padamalochini
- 7.M. Sakunthala
- 8.R. Alagiriswamy (died)
- 9.A. Alagiriswamy
10. V. Kalyanaswamy (died)
11. N.R. Soundararajan
12. K. Muthu Vasikanathan
13. A. Murugesan
14. S. Manavalan
15. P. Lakshmanan
16. A. Karunakaran
17. K. Kandaswamy
18. M. Palaniappan
19. Parvathi (died)
20. T. Krishnan
21. C. Selvaraj
22. K. Sundarajan
23. G.Natarajan
24. V.Marudachalam
25. C. Raja
26. N.Muralidharan
27. P.Mariappan
28. Siva Bagiyam
29. Visalakshi
30. B. Senthamaraikannan
31. Ayyammal
32. U. Sami Iyer
33. Sivabakiam
34. Selvaraj S/o. Late C.P. Nagamanikam Chettiar
35. Sivakami
36. Muraleedharan
37. Ramesh Babu
38. Ragubathi Raj
39. Kanna Prasad
40. K. Balasubramanian
41. Amirtham Ammal
42. Rajeswari

(R.42 is brought on records as
LR of deceased 8th respondent and
R.40 and R.41 are brought on
record as LRs. of deceased 10th
respondent) (Vide order dated 29.1.2007

CMP.303 to 314/07 and 322 to 333/07

.. Respondents in both SAs/ Defendants/
Respondent D4,6 to 11/R4,6 to 11

Respondents

Plaintiff/Appellant/Respondent
in S.A.41/97

Defendant/ Respondent /
Respondents 12 to 39

S.A.No.690 of 1998:

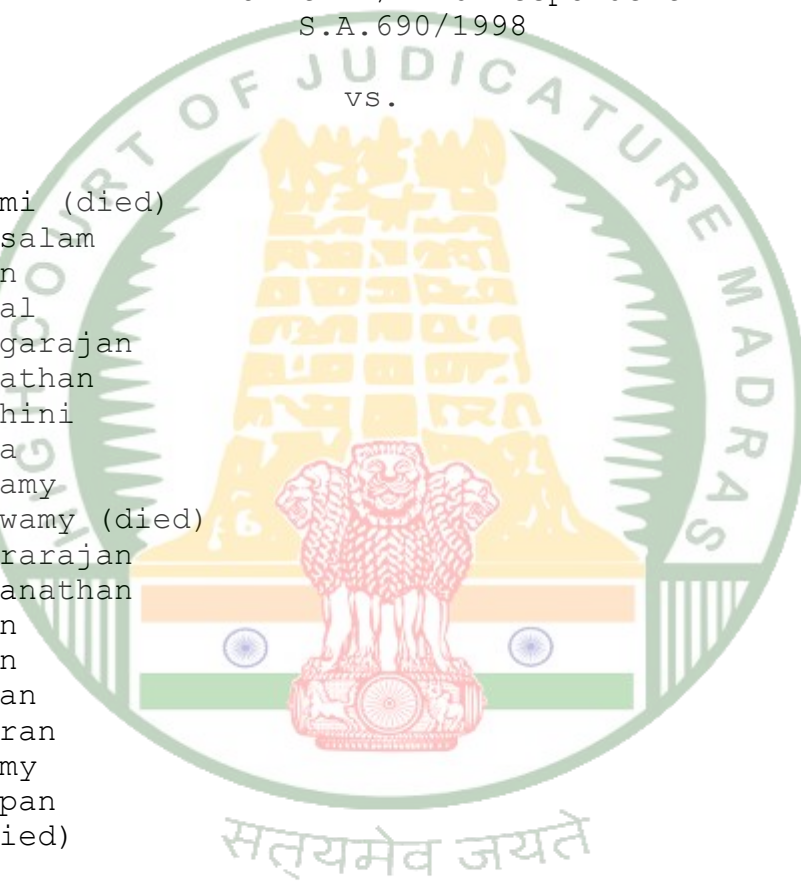
1. Venkitupathy (died)
2. Vasanthamani
3. V.Rajkumar
4. V. Muralidharan

(Appellants 2 to 4 are brought on record as LR's. of deceased sole appellant) (Vide order dated 20.1.2007 in C.M.P.9719 to 9724/06)

.. Appellants in both SA/ 2nd Plaintiff/ 2nd Respondent in S.A.690/1998

vs.

- 1.V. Kalyanasami (died)
- 2.L. Bakthavatsalam
- 3.L. Jeganathan
- 4.R. Manickammal
- 5.Santha Thiyagarajan
- 6.Deena Ranganathan
- 7.S. Padamalochini
- 8.S. Sakunthala
- 9.A. Alagiriswamy
- 10.R. Alagiriswamy (died)
- 11.N.R. Soundararajan
- 12.Muthu Vasikanathan
- 13.A. Murugesan
- 14.S. Manavalan
- 15.P. Lakshmanan
- 16.A. Karunakaran
- 17.K. Kandaswamy
- 18.N. Palaniappan
- 19.Parvathi (Died)
- 20.T. Krishnan
- 21.S. Selvaraj
- 22.G.Natarajan
- 23.K.Sundararajan
24. V.Marudachalam
25. C. Raja
26. N.Muralidharan
27. P.Mariappan
28. Siva Bagiyam
29. Visalakshi
30. R. Chenthamarai Kannan
31. Ayyammal
32. U. Sami Iyer
33. Sivabakiam
34. Selvaraj
35. Muralidharan
36. Ramesh Babu
37. Ragubathi Raj



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38. Kanna Prasad
39. Sivakkannu
40. K. Balasubramanian
41. Amirtham Ammal
42. Rajeswari

(R.40 and 41 are brought on record
as LR's. of deceased 1st defendant)

(R.42 brought on record as LR of
deceased 10th respondent) (Vide order dated 29.1.2007 in
CMP.303 to 314/07 CMP.322 to 333/07

.. Respondents/ Appellants 1 and 3 to 40/
Plaintiff 1 and 3 to 8
Defendants 1 to 9, 11 to 33

S.A.No.691 of 1998:

1. Venkitupathy (died)
2. Vasanthamani
3. V.Rajkumar
4. V. Muralidharan

(Appellants 2 to 4 are brought on
record as LR's. of deceased sole
appellant) (Vide order dated 20.1.2007
in CMP.9719 to 9724/06

.. Appellants/ 5th
Respondent in 5th Defendant
2nd Defendant

vs.

- 1.V. Kalyanasami (died)
- 2.R. Alagiriswamy (died)
- 3.A. Alagiriswamy
- 4.M.S.Soundararajan
- 5.L. Bakthavatsalam
- 6.L. Jeganathan
- 7.R. Manickammal
- 8.Santha Thiyagarajan
- 9.Deena Ranganathan
- 10.S. Padamalochini
- 11.L. Sakunthala
- 12.Muthu Vasikanathan
- 13.A. Murugesan
- 14.S. Manavalan
- 15.P. Lakshmanan
- 16.A. Karunakaran
- 17.K. Kandaswamy
- 18.N. Palaniappan
19. Parvathi (died)
- 20.T. Krishnan
- 21.C. Selvaraj

22.K.Sundararajan
23.G.Natarajan
24. V.Marudachalam
25. C. Raja
26. N.Muralidharan
27. P.Mariappan
28. Siva Bagiyam
29. Visalakshi
30. R. Chenthamarai Kannan
31. Ayyammal
32. Y. Sami Ayyar
33. Sivabakiam
34. Selvaraj
35. Sivasami
36. Muraleedharan
37. Ramesh Babu
38. Ragubathi Raj
39. Kanna Prasad
40. K. Balasubramanian
41. Amirtham Ammal
42. Rajeswari

... Respondents/ Plaintiff/
appellant 1 & 3 to 8
Defendants 1 to 9, 11 to 33/
Respondents 1 and 3 to 40

(R.40 and 41 are brought on record
as LRs. of deceased 1st defendant)

(R.42 brought on record as LR of
deceased 2nd respondent) (Vide order dated 29.1.2007 in
CMP.303 to 314/07, 322 to 333/07)
Respondents 41/
Defendants 41

Second Appeal Nos.314 of 1994 & 41 of 1997 are is filed under
Section 100 of the Code of Civil Procedure against the judgment
and decree dated 26.11.1993 made in A.S.No.194 of 1989 on the file
of First Additional District Judge, Coimbatore reversing the
judgment and decree dated 12.07.1989 made in O.S.No.89 of 1983 on
the file of Second Additional Subordinate Judge, Coimbatore.

Second Appeal Nos.315 of 1994 & 42 of 1997 are filed under
Section 100 of the Code of Civil Procedure against the judgment
and decree dated 26.11.1993 made in A.S.No.195 of 1989 on the file
of First Additional District Judge, Coimbatore reversing the
judgment and decree dated 12.07.1989 made in O.S.No.649 of 1985 on
the file of Second Additional Subordinate Judge, Coimbatore.

Second Appeal Nos.690 and 691 of 1998 are filed under Section
100 of the Code of Civil Procedure against the judgment and decree
dated 26.11.1993 made in A.S.Nos.20 and 225 of 1992 on the file of
Additional District Judge, Coimbatore reversing the judgment and
decree dated 12.07.1989 made in O.S.Nos.649 of 1985 and 89 of 1983
on the file of Second Additional Subordinate Judge, Coimbatore.

For appellants in: Mr. T.R.Rajagopalan, Sr.Counsel
SA.Nos.314&315 for M/s.Chitra Sampath
of 1994

For appellants in: Mr. R.Muthukumaraswamy, Sr.Counsel
SA.Nos.41&42 of for Mr.B.Raviraja
1997

For appellants in: Mr. P.Valliappan
SA.Nos.690&691 of
1998.

For respondents : Mr. T.M.Hariharan for R.1 & R.2
in SA.Nos. Mr. K.Venkatapathy, Sr.Counsel
314 & 315/1994. for Mr.K.V. Sundara Rajan for R.4

Mr.C.T. Prabhakar for R.12
Mr.G. Masilamani, Sr.Counsel
for Mr.B. Rajednran for R.36
Mr.T.V. Krishnamachari for R.37
Mr.R. Muthukumarasamy, Sr.Counsel
for Mr.B. Raviraja for R.38

Mr.V. Raghavachari
for Mr.Seshu Balan Raja for R.39

Mr.K.Goviganesan for R.3 and R2 in
S.A.315/94
Mr.R.C. Paul Kanagaraj for R.

Mr.K. Surendranath for R.40 & R.41

Mr.Anand Venkatesan for R.6 to R.11,
R.14 to 17, 19, 20, 22, 28, 29 and 31 to 33
in S.A.315/94
Mr. Sathish Parasaran for R 30

For respondents in: Mr.T.R.Rajagopalan, Sr.Counsel
SA.Nos.41&42/97 M/s.Chitra Sampath for R.1 to R.7

Mr.T.M. Hariharan for R.8

Mr.R. Muthulingam for R.12 to 17, 20
to 23, 25, 26, 28 and 34 to 37 in
SA.No.41/97 and
for R.11 to 16, 19 to 22, 24, 26 to
28 and 33 to 37 in SA.No.42/97.

For respondents in: Mr.T.R.Rajagopalan, Sr.Counsel
SA.Nos.690 & 691/98 M/s.Chitra Sampath for R.2 to R.8 in
SA.No.690/1998 & R.5 to R.11 in
SA.No.691/98.

COMMON JUDGEMENT

Nearly 93 items of properties which include immovable properties situated in Uppilipalayam Village, Kalapatti Village, Singanallur Village, Vellakinaru Village and Kurudampalayam Village, all at Coimbatore District, originally belonged to one R.Venkitusamy Naidu, who died leaving behind him, 2 sons viz., R.V.Lakshmiah Naidu and R.V.Rangasamy Naidu and 5 daughters, viz., Ranganayakiammal, Thayammal, Krishnammal, Nagammal and Ammaniammal.

2. R.V.Rangasamy Naidu died on 01.06.1955, leaving behind him, his wife Krishnammal without any other legal heirs. His wife Mrs. Krishnammal also died on 30.04.1977.

3. The other son of R.Venkitusamy Naidu, viz., R.V. Lakshmiah Naidu also died on 05.04.1958, leaving behind him his 4 sons, viz., L. Bakthavatsalu, L. Venkatapathy, L. Jagannathan and L. Ramasamy, out of whom, the first three are the defendants 4 to 6 in O.S.No.89 of 1983 and plaintiffs 1 to 3 in O.S.No.649 of 1985.

4. One of the sons of R.V.Lakshmiah Naidu, viz., L.Ramasamy died leaving behind him his wife Manickammal and his daughters Mrs. Santha Thiyagarajan, Theena Ranganathan, M.Padhamalochini and S.Sakunthala, who are defendants 7 to 11 in O.S.No.89 of 1983 and plaintiffs 4 to 8 in O.S.No.649 of 1985.

5. One of the daughters of Venkitusamy Naidu, viz., Ranganayaki Ammal's son A.Alagirisamy, is the first defendant in both the suits.

6. Likewise, the other daughter of Venkitusamy Naidu, viz., Thayammal's son Kalyanasamy, is the second defendant in both the suits.

7. The other daughter of Venkitusamy Naidu, viz., Krishnammal's son R.Alagirisamy, is the plaintiff in O.S.No.89 of 1983 and third defendant in O.S.No.649 of 1985.

8. The other daughter of Venkitusamy Naidu, viz., Nagammal's son N.R. Soundararajan, is the third defendant in O.S.No.89 of 1983 and 4th defendant in O.S.No.649 of 1985.

9. R.Alagirisamy, son of one of the sisters of R.V. Lakshmiah Naidu and R.V.Rangasamy Naidu, filed the suit in O.S.No.89 of 1983 on the file of learned Subordinate Judge, Coimbatore for declaration and partition of title in respect of 1/3rd share in the properties mentioned in Schedule-I or 1/4th share in the properties mentioned in Schedule-II and for separate possession.

10. The defendants 4 to 11 in the said suit, viz., O.S.No.89 of 1983 have filed the other suit in O.S.No.649 of 1985 for declaration and injunction that they are absolutely entitled to the suit properties, thereby denying the claim of the plaintiff in O.S.No.89 of 1983, to have a share in the same.

11. The suit properties involved in both the suits are relating to 9 items of properties comprised in:

(i)G.S.No.181	- 4.50 acres
(ii)G.S.No.183/1	- 1.69 acres
(iii)G.S.No.184/1	- 3.20 acres
(iv)G.S.No.185	- 5.24 acres
(v)G.S.No.187	- 4.62 acres
(vi)G.S.No.189	- 4.17 acres
(vii)G.S.No.190	- 5.41 acres
(viii)G.S.No.191	- 4.44 acres
(ix)G.S.No.192	- 3.52 acres
Total extent	-36.79 acres.

12. The case of the plaintiff in O.S.No.89 of 1983 was that R.V.Rangasamy Naidu died on 01.06.1955 without male or female issues and he left behind his widow Krishnammal. According to him, R.V.Rangasamy Naidu has left a registered Will dated 10.05.1955, by which he has bequeathed his properties to be enjoyed by his wife Krishnammal during her life time without any power of alienation and after her life time, the properties should vest with the sons of his sisters, viz., the plaintiff as well as defendants 1 to 3 in O.S.No.89 of 1983. It is stated that the original Will is with the 12th defendant in the suit, viz., M.V. Ramachandra Naidu, who is said to have been appointed as Executor and the original Will would be produced later.

12(a). It is the further case of the plaintiff that, after the death of Krishnammal on 30.04.1977, even though the plaintiff as well as defendants 1 to 3 in O.S.No.89 of 1983 are entitled to 1/4th share equally as per the Will, defendants 4 to 11 in O.S.No.89 of 1983, who are the legal heirs of another brother of R.V.Rangasamy Naidu, viz., R.V. Lakshmiah Naidu, claiming themselves to inherit the property after the demise of R.V. Lakshmaya Naidu and R.V. Rangasamy Naidu, have filed a suit in O.S.No.2037 of 1982 on the file of District Munsif's Court, Coimbatore for declaration and injunction that they are solely entitled to the properties. The said suit was subsequently transferred to Sub-Court, Coimbatore and renumbered as O.S.No.649 of 1985.

12(b). According to the plaintiff in O.S.No.89 of 1983, apart from his 1/3rd share, defendants 1 to 3 have shares in the property, each entitled to 1/3rd share and defendants 4 to 11 have no right. Further, according to him, defendants 4 to 11 cannot have any claim over the property, since the two brothers, viz., R.V.Lakshmiah Naidu and R.V.Rangasamy Naidu have divided among themselves as early as in the year 1932 and enjoyed their respective shares separately and Item No.1 to 3 and 6 to 9 of the properties were allotted to the share of R.V. Rangasamy Naidu and

item Nos.4 and 5 were purchased by R.V. Rangasamy Naidu, long after partition with his brother R.V.Lakshmiah Naidu.

12(c). It was his further case that by virtue of the Will executed by R.V.Rangasamy Naidu, he was enjoying the properties absolutely and the previous partition in the year 1932 between R.V.Rangasamy Naidu and his brother R.V.Lakshmiah Naidu has been stated categorically in the Will dated 10.5.1955. It was the further case of the plaintiff that after the death of R.V.Rangasamy Naidu, his brother R.V.Lakshmiah Naidu and his sons, namely, defendants 4 to 6 tried to trespass into the properties and that was resisted by the wife of R.V.Rangasamy Naidu, namely, Krishnammal, who has preferred a complaint under Section 145 Cr.P.C. It was the case of the said R.V.Lakshmiah Naidu and his sons that they along with R.V.Rangasamy Naidu, were members of a Hindu joint family and the said Krishnammal being the wife of R.V.Rangasamy Naidu was having only a right of maintenance and the proceedings filed under section 145 Cr.P.C. was decided against the said Krishnammal and the revision filed before this Court was also dismissed.

12(d). It was stated that the said Krishnammal has filed a suit in O.S.No.71 of 1958 for declaration of her title in respect of properties as per the Will executed by R.V.Rangasamy Naidu dated 10.5.1955. The executor of the said Will who is the 12th defendant in O.S.No.89 of 1983, by name, M.V.Ramachandra Naidu was also made as 5th defendant in O.S.No.71 of 1958, apart from the defendants 4 to 6 in O.S.No.89 of 1983 and their another brother Ramasamy Naidu. There was a compromise arrived at between Krishnammal and the defendants, by which Krishnammal was given 7 items of properties absolutely and the amounts mentioned in other three items, viz., Item Nos.8, 9 and 13 and she has given up her right in all other properties including the properties described in the schedule of the present suits, viz., O.S.No.89 of 1983 and O.S.No.649 of 1985.

12(e). The plaintiff would also state that in terms of the said compromise, a decree was passed on 21.7.1958. Further, according to the plaintiff, the said compromise is not valid as the legatees were not parties to the said compromise. That apart, Krishnammal was having only life interest in the properties and therefore, she was not entitled to enter into such a compromise and the decree is not binding on the estate and Krishnammal had no right to give up her right in respect of the present suit properties. It is also admitted by the plaintiff that when Krishnammal abandoned her right under the compromise, he filed the suit in O.S.No.36 of 1963 for declaration that Krishnammal had only life interest without the power of alienation and the plaintiff was entitled to vested right in the properties under the Will stated to have been executed by R.V.Rangasamy Naidu dated 10.5.1955. In that suit, apart from the said Krishnammal and Ramachandra Naidu, the executor of the Will of R.V.Rangasamy Naidu, the defendants 4 to 6 in O.S.No.89 of 1983 and their brother Ramasamy Naidu as well as the sister of R.V.Rangasamy Naidu, viz., Ranganayagi ammal were also made parties.

12(f). It is further stated by plaintiff that pending the said suit in O.S.No.36 of 1963, Krishnammal has sold many properties retaining only two items of properties which are (i) Survey No.467 (0.82 acres out of 0.98 acres) and (ii) Survey No.466 (3.60 acres out of 6.02 acres) which are not forming part of the suit properties in the present suit. It was in those circumstances, a compromise was entered in that suit and accordingly, a compromise decree was passed on 18.2.1974 wherein the said two items of properties retained by Krishnammal were declared in favour of the plaintiff. According to the plaintiff, the said compromise has not impeached the validity of the Will executed by R.V.Rangasamy Naidu and according to the plaintiff, the terms of compromise confirmed the execution of the Will by R.V.Rangasamy Naidu. The plaintiff has also denied the allegations of the plaintiffs in O.S.No.649 of 1985 who are the defendants 4 to 11 in O.S.No.89 of 1983. According to the plaintiff, the said defendants 4 to 11 are in possession of the present suit properties without any title and therefore their possession should be treated as unlawful and in view of the same, the present suit for declaration and partition was filed.

13. The defendants 4 to 11 who are the plaintiffs in O.S.No.649 of 1985 have filed written statement. While the relationship between the parties are admitted, it was the case of the said defendants that there was no division between R.V.Lakshmiah Naidu and R.V.Rangasamy Naidu. The Will said to have been executed by R.V.Rangasamy Naidu was also denied, and according to them, on the death of the said R.V.Rangasamy Naidu, the surviving coparcener, viz., his brother R.V.Lakshmiah Naidu took all the properties by survivorship. According to the defendants 4 to 11, R.V.Rangasamy Naidu was seriously ill, suffering from cancer and the plaintiff and defendants 1 to 3 should have obtained the signature in the Will by undue influence, coercion and fraud and the Will is not genuine. It was also their case that inasmuch as R.V.Rangasamy Naidu and his brother R.V.Lakshmiah Naidu were not divided, there was no necessity on the part of R.V.Rangasamy Naidu to execute such a Will. It was their further case that the recitals stated in the said Will about the oral partition in the year 1932 between R.V.Lakshmiah Naidu and R.V.Rangasamy Naidu are false. It was also their further case that the Will alleged to have been executed by R.V.Rangasamy Naidu has never come into existence immediately after the death of the said R.V.Rangasamy Naidu and therefore, it is only an after-thought.

13(a). It was their further case that R.V.Rangasamy Naidu was taken to Bombay for treatment and when he was taken to Coimbatore, his condition was worse due to brain tumor and practically, he was unconscious and in that unconscious stage, he was again taken to Bombay where he died and therefore, R.V.Rangasamy Naidu was not in a position to execute any Will and subsequent to the death of R.V.Rangasamy Naidu, R.V.Lakshmiah Naidu was in enjoyment of all the properties. It was their further case that Krishnammal, wife of R.V.Rangasamy Naidu has made a false case under Section 145

Cr.P.C. which was dismissed and the High Court has also confirmed the same. It was also their case that inasmuch as Krishnammal has taken the order under Section 145 Cr.P.C. upto the High Court and failed, the plaintiff as well as the defendants 1 to 3 are estopped and debarred from questioning their title to the properties. It was also stated by them that even in the earlier suit in O.S.No.71 of 1958 it was their contention that the Will alleged to have been executed by R.V.Rangasamy Naidu is not valid and true and that only after the parties came to know that the Will was not genuine, Krishnammal gave up all her rights and a compromise was entered into.

13(b). It was also their case that in fact in the said case, Krishnammal has also claimed an alternative claim for partition which was given up by her. The executor of the alleged Will viz., Ramachandra Naidu was also a party to the said proceedings and a consenting party to the compromise and these defendants have been in possession of the properties. Even though the legatees were not parties in the earlier suit, the predecessor-in-interest, viz., Krishnammal and the executor of the Will were parties and therefore, the decision taken in the said suit is binding upon the plaintiff and defendants 1 to 3. According to the said defendants, the compromise was acted upon as admitted by the plaintiff himself and in fact, as per the compromise, the said Krishnammal who got certain properties has sold those properties and the alienees of the said properties have not been impleaded as parties. It was their further case that inasmuch as in O.S.No.36 of 1963 filed by the present plaintiff himself, he has accepted for a compromise by which there was a declaration in respect of two items of properties, the plaintiff is deemed to have given up his claim or title on the basis of the will. Therefore, according to the said defendants, by virtue of the compromise in the said suits, the plaintiff and the defendants 1 to 3 have lost all their rights in the properties. It was also denied that the compromise decree in O.S.No.71 of 1958 has nothing to do with the validity of the Will. It was also their case that the said Krishnammal died in the year 1977, but the plaintiff and the defendants 1 to 3 have been fighting against her till her death and in many of the proceedings their right and possession over the properties have been negatived.

14. It was on the basis of the said pleadings raised by the defendants 4 to 11 in the written statement, the said defendants have filed their suit in O.S.No.649 of 1985 for declaration as stated above and that was defended by the defendants in the said suit including the plaintiff in O.S.No.89 of 83 raising claims similar to the one made in the plaint in O.S.No.89 of 1983.

15. The 12th defendant who is said to be the executor of the Will of R.V.Rangasamy Naidu dated 10.5.1955 has also filed a written statement. Even though he is not concerned with the dispute between the plaintiff and the defendants, in the written statement he has stated that the Will has never been acted upon and the properties have not been put in possession as stated in the will. According to him, he was not a consenting party to

various suits in which compromise was entered into and therefore, it was his categorical stand that he cannot be attributed to such knowledge.

16. It was with the above said pleadings, the parties went on to trial. Both the suits were taken together for trial by the learned trial Judge who has taken the plaintiffs in O.S.No.649 of 1985 who are defendants 4 to 11 in O.S.89 of 1983 as plaintiffs' side witnesses and the defendants therein including the plaintiff in O.S.No.89 of 1983 as defendants' side witnesses and proceeded with the trial, by framing various issues including

- (i) whether the will dated 10.5.1955 stated to have been executed by R.V.Rangasamy Naidu is true, valid and acted upon?
- (ii) whether there was a previous oral partition between R.V.Rangasamy Naidu and his brother R.V.Lakshmiah Naidu?
- (iii) Whether R.V.Lakshmiah Naidu has inherited the properties on the basis of survivorship after the death of his brother R.V.Rangasamy Naidu?
- (iv) Whether the decision in the proceedings under section 145 Cr.P.C. will be an estoppel against the plaintiff and defendants 1 to 3 in O.S.No.89 of 1983?
- (v) Whether the compromise decree obtained in O.S.No.71 of 1958 is collusive, void and not binding on the plaintiffs?
- (vi) Whether the suit in O.S.No.89 of 1983 is barred by res judicata in view of the compromise decree in O.S.No.36 of 1963?
- (vii) Whether it is true that the first defendant in O.S.No.89 of 1983 has partitioned himself?
- (viii) Whether the suit in O.S.No.89 of 1983 is liable to be dismissed for non-joinder of necessary parties?
- (ix) Whether the suit was properly valued?
- (x) Whether the defendants 12 to 34 are proper parties?
- (xi) Whether the plaintiff in O.S.No.89 of 1983 is entitled to a decree for partition; if so, what are all the properties to be partitioned and what is his share?
- (xii) Whether the suit in O.S.No.89 of 1983 is affected by Order II, Rule 2 C.P.C.? and
- (xiii) Whether the plaintiffs in O.S.No.649 of 1985 are entitled to the relief of declaration?

The following additional issue was also framed:

Whether after the advent of the Central Act 30 of 1986, the limited right of Krishnammal under the Will has become absolute?

17. On the side of the plaintiffs in O.S.No.649 of 1985, one Venkatasamy was examined as P.W.1 and documents Exs.A-1 to A-117 were marked. Likewise, on the side of the defendants therein, one Alagirisamy was examined as D.W.1 and documents Exs.B-1 to B-18 were marked. That apart, two documents were marked as Court documents, viz., Exs.C-1 & X-1.

18. On appreciation of the oral and documentary evidence, the learned trial Judge has held that the alleged Will of R.V.Rangasamy Naidu dated 10.5.1955 has not been proved, apart from holding that there was no prior partition between R.V.Rangasamy Naidu and R.V.Lakshmiah Naidu. He has also come to the conclusion that the compromise decree in O.S.No.36 of 1963 bars the present suit under Order II, Rule 2 C.P.C., and in view of the same, dismissed the suit for partition in O.S.No.89 of 1983 and decreed the suit in O.S.No.649 of 1985 holding that the defendants 4 to 11 in O.S.No.89 of 1983 are entitled to declaration as prayed for.

19. As against the said common judgement and decrees of the trial Court, the plaintiff in O.S.No.89 of 1983 has filed appeals before the First Additional District Judge, Coimbatore in A.S.No.194 of 1989 in respect of judgment and decree in O.S.No.89 of 1983 and A.S.No.195 of 1983 in respect of judgment and decree in O.S.No.649 of 1985. The second defendant in both the suits has filed A.S.Nos.20 and 225 of 1992.

20. The learned first appellate Judge has reversed the judgment and decree of the trial Court in both the suits and by a common judgment dated 26.11.1993, has decreed the suit in O.S.No.89 of 1983 by granting the relief of partition to the plaintiff and the defendants 1 to 3 in the said suit, and dismissed the suit in O.S.No.649 of 1985 filed by the defendants 4 to 11 in O.S.No.89 of 1983. It was, as against the said judgment and decrees of the first appellate Court, the above second appeals are filed.

21. S.A.No.314 of 1994 is filed by the defendants 4, 6 to 11 in O.S.No.89 of 1983 against the judgment in A.S.No.194 of 1989. Likewise, S.A.No.315 of 1994 is filed by the said parties who are all plaintiffs 1, 3 to 8 in O.S.No.649 of 1985 as against the judgment and decree of the first appellate Court in A.S.No.195 of 1989. The 5th defendant in O.S.No.89 of 1983 has filed S.A.No.41 of 1997 against the judgment and decree in A.S.No.194 of 1989 and he has also filed S.A.No.42 of 1997 as second plaintiff in O.S.No.649 of 1985 as against the judgment and decree in A.S.No.195 of 1989. Further, the second plaintiff in O.S.No.649 of 1985 has filed S.A.No.690 of 1998 against the judgment and decree in A.S.No.20 of 1992. Likewise, the 5th defendant in O.S.No.89 of 1983 has filed S.A.No.691 of 1998 against the judgment in A.S.No.225 of 1992.

22. As, pending appeals in S.A.Nos.690 and 691 of 1991, the appellant died, his legal heirs were brought on record as appellants 2 to 4.

23. While admitting the second appeals, the following substantial questions of law were framed:
S.A.Nos.314 & 315 of 1994:

1. Is the learned District Judge right in holding that the Will Ex.B.10 executed by one of the co-parceners of specific items of joint family property is valid and enforceable after upholding the finding of the trial Court that there was no partition between Rangasamy Naidu, executant of the Will, and his brother in 1932?

2. When there is no specific plea or issue of evidence to the effect that division in status was effected between Rangaswamy Naidu and his brother on 10.05.1955, is the Learned District Judge right in holding Division in status was effected by reason of Ex.B1 publication especially when there is no unequivocal declaration to separate from the other co-parcener?

3. Having held that a coparcener in a joint Hindu family cannot unilaterally allot properties to himself, is the learned District Judge right in holding that the plaintiffs in O.S.No.649/85 are estopped from questioning the said bequest especially when they had disputed the truth and genuineness of the Will by their conduct?

4. Having accepted the legal position that the life interest given to Krishnammal under Ex.B.10 enlarges into an absolute interest by reason of Sec.14(1) of the Hindu Succession Act, 1956 is the learned District Judge legally right in holding that only Sec.14(2) is applicable for the reasons mentioned in para 56 of the judgment?

5. Is not the suit O.S.No.89 of 1983 barred by Order 2 Rule C.P.C. On the plaintiffs had failed to include the suit properties in O.S.No.36 of 1963?

6. Are not the plaintiffs in O.S.No.89/83 estopped from claiming title to the suit properties by reason of the decree in O.S.No.36 of 1963?

S.A.Nos.690 & 691 of 1998:

1. Whether the lower appellate Court having rejected the 1932 partition, is correct in law in finding that Ex.B.1 created a division in status?

2. Whether the lower appellate Court is correct in law, in finding that though the unilateral allotment of property by Rangasamy Naidu in Ex.B.1 is not valid under Hindu Law, erred in upholding the said allotment by virtue of the subsequent conduct of the plaintiffs?

3. Whether the construction of the lower

appellate Court of the decrees in O.S.No.71/58 and O.S.33/63 is correct in law?

4. Whether the lower appellate Court was correct in law in finding that Section 14(1) of the Hindu Succession Act will not apply to the facts of this case?

S.A.Nos.41 & 42 of 1997:

1. Is the learned District Judge right in holding that the will Ex.B.10 executed by one of the co.parceners of specific items of joint family property is valid and enforceable after upholding the finding of the trial Court that there was no partition between Rangasamy Naidu executant of the Will and his brother in 1942?

2. Having accepted the legal position that the life interest given to Krishnammal under Ex.B.10 enlarges into an absolute interest by reason of Sec.14(1) of the Hindu Succession Act, 1956, is the learned District Judge legally right in holding that only Sec.14(2) is applicable for the reasons mentioned in para 56 of the judgment?

24. Mr.T.R.Rajagopalan, learned senior counsel appearing for the appellants in S.A.Nos.314 & 315 of 1994 has contended that when the learned first appellate Judge has accepted the finding of the trial Court that there was no oral partition between R.V.Rangasamy Naidu and R.V.Lakshmiah Naidu in 1932, the said fact has become final and in such circumstances, if it was the case of the plaintiff in O.S.No.89 of 1983 that R.V. Rangasamy Naidu had intended to divide from his brother R.V. Lakshmiah Naidu, there should be pleading and evidence to that effect and there is no such plea raised at any point of time about the division in status. It is his contention that the plaintiff in O.S.No.89 of 1983 relies upon a publication in "Nava India" dated 12.05.1955 marked as Ex.B.1, apart from the registration copy of the Will dated 10.05.1955, stated to have been executed by R.V. Rangasamy Naidu, marked as Ex.B.10 and on the other hand, in the written statement filed by the first defendant in O.S.No.649 of 1985, he has referred to about "Nava India" publication dated 10.05.1955 and also a reply notice stated to have been issued by R.V. Lakshmaya Naidu dated 11.05.1955.

25. According to him, it is not the case of the plaintiff in O.S.No.89 of 1983 that there were two publications and in the absence of production of the documents stated by the first defendant in O.S.No.649 of 1985, it has to be construed that there was no division in status, since such an intention of R.V. Rangasamy Naidu has never been communicated to the co-parceners before his death on 01.06.1955. Even though there was a reference in the proceedings in Criminal Appeal No.407 of 1956 marked as Ex.A.109 which relates to the proceedings under Section 145 Criminal Procedure Code, there was no discussion at all. His further contention is that when the plaintiff in O.S.No.89 of 1983 relies upon the Will dated 10.05.1955, stated to have been

executed by R.V. Rangasamy Naidu, by which the plaintiff in the said suit along with others claiming absolute right after the life time of Krishnammal, the plaintiff ought to have proved the execution of the Will and in the absence of the original Will produced before the Court and in the absence of any steps taken by the plaintiff to produce the original Will, there is no question of resorting to secondary evidence and therefore, the learned First Appellate Judge ought to have rejected the claim of the plaintiff in O.S.No.89 of 1983 on the basis of the Will. In the statement given by one of the attesting witnesses in the Ex.B.10 Will, in Section 145 Cr.P.C. Proceedings cannot be taken as sufficient proof of execution and attestation as per Section 68 of the Indian Evidence Act. It is his contention that when both the Courts have accepted, relying upon the judgment of the Supreme Court in Potti Lakshmi Perumallu vs. Potti Krishnavenamma (AIR 1965 SC 825), that no co-parcener has any right to allot to himself specific items of the joint family properties without the consent of the other co-parceners, that aspect of the Will cannot be given effect to. According to him, the learned First Appellate Judge is not correct to conclude that by virtue of the compromise decree in O.S.No.71 of 1958 by which some of the properties covered under the said Will were given to Krishnammal was with the knowledge of the co-parceners and therefore the co-parceners have accepted and admitted the unilateral allotment by R.V.Rangasamy Naidu to himself. According to him, when the Will becomes invalid in law, there is no question of cure of the legal defects by subsequent agreement between other parties. He would also further submit that the succession of the estate of late R.V.Rangasamy Naidu opened on 01.06.1955, the date on which he died and it was before the coming into effect of the Indian Succession Act, 1956. According to him, whether R.V. Rangasamy Naidu is a divided member or undivided co-parcener, his wife Krishnammal had a limited estate as per Hindu Widows Right to Property Act, 1937 and on introduction of Hindu Succession Act, 1956 her limited estate became absolute by virtue of Section 14 (1) of the Hindu Succession Act.

26. It is his further contention that it is only based on her enlarged right she was able to enter into a compromise in the earlier suit of O.S.No.71 of 1958, by which she was given absolute right in the properties allotted under the said decree. To substantiate his contention, he would rely upon the judgments of the Supreme Court reported in:

- (i) Jagannathan Pillai v. Kunjithapadam Pillai (AIR 1987 SC 1493),
- (ii) C.Masilamani Mudaliar & others v. Idol of Sri Swaminathaswami Thirukoil and others (1996 (8) SCC 525),
- (iii) Shakuntla Devi v. Kamla & others (2005 (5) SCC 390) and
- (iv) Balwant Kaur v. Chanan Singh (2000 (6) SCC 310).

The learned senior counsel would also state that it is only in cases of succession after 1956 Act, if any male member executes a document restricting female members right, such a situation is governed under Section 14 (2) of the Act by way of restriction. According to the learned senior counsel, once a compromise decree is effected in O.S.No.71 of 1958 and O.S.No.36 of 1963 and some of

the properties have been given to Krishnammal and in turn, she has given up other properties, it is not correct to claim those properties now in O.S.No.89 of 1983 and according to him, the plaintiff in the said suit as well as the defendants 1 to 3 have admitted the absolute right of Krishnammal and on the basis of the same seven items were allotted to her in compromise decree in O.S.No.71 of 1958. He would also submit that the suit in O.S.No.89 of 1983 is not maintainable by virtue of bar created under Order II Rule 2 of Civil Procedure Code, since the plaintiff had filed O.S.No.36 of 1963 claiming right under the same Will executed by R.V.Rangasamy Naidu and in the absence of specific leave obtained from the Court, the suit is not maintainable.

27. Mr.P.Valliappan, learned counsel appearing for the appellant in S.A.Nos.690 and 691 of 1995, while adopting the arguments of Mr.T.R.Rajagopalan, learned senior counsel, would also submit that the plaintiff in O.S.No.89 of 1983 has failed to establish the execution of the Will especially when defendants 4 to 11 have been consistently denying such execution, and hence, there is no question of inference of the existence of the Will based on the evidence in the proceedings under Section 145 Cr.P.C. It is also his contention that even the evidence of PW.1 in the said Criminal Proceedings has not been filed before the Court. Therefore, according to the learned counsel, the plaintiff in O.S.No.89 of 1983 having not taken any steps to produce the original Will cannot be expected to rely upon the principle of secondary evidence. It is also his contention that the plaintiff on the other hand, was conscious to avoid the production of the Will before the Court. He would also refer to some of the factual position about the ailment of R.V.Rangasamy Naidu before his death and before the date of alleged execution of the Will. He would submit that the deposition of Venkatasamy Naidu, one of the attesting witness of the Will who has given evidence in Section 145 Cr.P.C. Proceedings is not sufficient to prove the validity of the Will as per Section 68 of the Indian Evidence Act. He would also rely upon the judgments of the Supreme Court including J.Yashoda v. Karuppaiah .Shobha Rani [2007(3) CTC 781], Moonga Devi v. Radha Ballab [AIR 1972 SC 1471] and Bhagwan Kaur v. Kartar Kaur [1994 (5) SCC 135] to substantiate his contention that unless and until a party proves with proper and cogent explanation about the absence of primary evidence, secondary evidence is inadmissible. He would also submit that the plea of division of status between R.V.Rangasamy Naidu and R.V.Lakshmiah Naidu has never been proved especially when there are enormous contradictions in the statements made by the parties in that regard and the same has not been considered by the learned first Appellate Judge. He would also adopt the arguments of the learned senior counsel T.R. Rajagopalan about the applicability of Section 14(1) of the Hindu Succession Act by referring to various judgments of the Supreme Court commencing from V.Tulasamma v. Sesha Reddy [AIR 1977 SC 1944] and contended that after the advent of Hindu Succession Act, 1956, the limited interest has enlarged into absolute right. He would also rely upon Section 34 of the Specific Relief Act and contend that O.S.No.89 of 1983 is barred by that Section when an endorsement is made by the plaintiff in

respect of Court fees. According to him, on facts it is not correct to state that the family was owning 1400 acres. On the other hand it is only 123 acres as found in Schedules I and IA and there are no other properties which the family possessed.

28. Mr. R. Muthukumarasamy, learned senior counsel for the appellants in S.A.No.41 and 42 of 1997 has also reiterated the various submissions made by the counsel for appellants in the above appeals.

29. On the other hand, Mr.G.Masilamani, learned senior counsel appearing for respondents in S.A.Nos.314 and 315 of 1994 would submit that an undivided Hindu Coparcener has a right to execute a Will in respect of his share. According to him, it is only 55 acres out of 1050 acres which were taken by R.V.Rangasamy Naidu under the Will Ex.B.10. He would submit that the publication given by R.V.Rangasamy Naidu on 10.05.1955 in "Nava India" newspaper has in fact reached the other co-parcener, viz., R.V.Lakshmiah Naidu and the very fact that R.V.Lakshmiah Naidu replied on 11.5.1995 shows that the said R.V.Lakshmiah Naidu was informed about the intention of R.V.Rangasamy Naidu to have division in status and therefore it should be presumed that the division has come into effect and according to him, such intention need not be in writing also. He would further submit that it is the intention of the testator which has to be given effect to, instead of sticking on the technicalities for throwing out the actual purpose behind the Will. It is submitted that both the attesting witnesses are not alive and the Will could be proved under Section 69 of the Indian Evidence Act and not under Section 68 of the said Act. He would also submit that Section 63 of Indian Succession Act applies only to cases where Section 68 of the Indian Evidence Act is applicable and as far as cases which are covered under Section 69 of Indian Evidence Act, it only requires to be proved that the attestation was in the handwriting of that person who was described as the attesting witness and the signature of the person executing the document is in the handwriting of that person and for that, he relied upon the judgment reported in G.Vaidehi vs. S.Govindarajan (1992 (2) MLJ 393). It is his further contention that the attesting witness need not speak in terms of Section 63(c) of the Indian Succession Act. It is also his contention that if there are no other evidence available to prove the Will, the certificate of registration is the prima facie evidence of its execution as per section 60 of the Registration Act. He would also rely upon Irudayammal & others v. Solayath Mary [1972 (2) MLJ 508] and Janaki Devi v. R.Vasanthi & others [2005 (1) CTC 11]. He would submit that the bequeath made to a female member need not be a pre-existing right so as to attract Section 14(1) of the Hindu Succession Act and in that regard, he would rely upon Sharad Subramanyan vs. Soumi Mazumdar [2006 (8) SCC 91]. According to him, the possession and exclusive right to enjoy for life and the pre-existing right are necessary for invoking Section 14(1) of the Hindu Succession Act and inasmuch as Kirshnammal, viz., wife of R.V.Rangasamy Naidu was not having any exclusive right to enjoy the properties, it would come under Section 14(2) of the Hindu

Succession Act and not under Section 14(1), as per the judgment of the Supreme Court in Sadhu Singh v. Gurdwara Sahib Narike [2006 (8) SCC 75]. He would also submit that Order II Rule 2 C.P.C. has no application. It is his further submission that simply because an issue has not been framed in the suit about the division in status, that itself cannot invalidate the finding of the Court and the conclusion cannot be interfered with merely on the basis of omission of framing of a specific issue. In that regard he relied upon the decision in Sirajudeen (died) & others v. Sethu Chettiar & others [2001 (3) MLJ 107]. He would also submit that the question of estoppel does not arise in this case inasmuch as the earlier proceedings are not between the parties herein. He would also rely upon Section 80 of the Indian Evidence Act and submit that evidence taken in other judicial proceedings or by any other officer authorized by law to take such evidence, creates a presumption that such evidence was duly taken and therefore, according to him, the evidence of one of the attesting witnesses Venkatasamy Naidu in Section 145 Cr.P.C. proceedings should be taken as an authenticated evidence and on that basis, the trial Court should have decided that the Will has been proved. Ultimately, it is his contention that the learned first Appellate Judge has appreciated the entire legal and factual position and hence, judgment of the first appellate Court need not be interfered with.

30. Mr. Anand Venkatesh learned counsel appearing for respondents 6 to 11 in S.A.Nos.314 and 315 of 1994 and others, who are the purchasers from the vested remainders, apart from adopting the arguments of the learned senior counsel Mr. G. Masilamani, has submitted that on the factual position, the division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu has been proved. According to him, the concept of severance in status is not equivalent to the division in status by metes and bounds in which case, the property need not be separated and it is sufficient if it is proved that the property has been separately enjoyed. He would also rely upon judgment in Appovier alias Seetharamier vs. Rama Subba Aiyan and others (1866 II MIA 75). He would also rely upon Adiyalath Katheesumma v. Adiyalath Beechu @ Umma & others [AIR 1951 Madras 561] to insist about the manifestation of severance in status. He would further rely upon Rukhmahai v. Lala lakshminarayan [AIR 1960 SC 335] to contend that severance in status can be presumed even without separate tax is being assessed and when there is no account of joint undivided family. He also submitted that in the absence of assessment by the Hindu undivided family, it could be presumed that the property was enjoyed in severance. He also relied upon various portions of the evidence given by Venkatasamy Naidu, attesting witness of the Will dated 10.05.1955 in the proceedings under Section 145 Cr.P.C. and submitted that the first appellate Court has correctly dealt with each and every one of the legal aspects in entirety and it does not require any interference.

31. Mr. T. M. Hariharan, learned counsel appearing for the first defendant in both the suits, who is the first respondent in Second Appeal Nos.314 and 315 would submit that both the courts have on

fact come to a concurrent finding on analysis of evidence that there has been division in status which has taken place between R.V. Rangasamy Naidu and R.V. Lakshmayya Naidu and therefore, according to him, once division has taken place, the question of survivorship does not arise and as found by the first appellate Court, the Will stands proved and the partition has to be effected. According to him, even assuming that the Will is not proved, once it is held that the division in status has taken place, the partition has to be effected. According to the learned counsel, the contention that the plea of survivorship and the simultaneous plea that the estate of Krishnammal enlarged under Section 14(1) of the Hindu Succession Act are mutually destructive. When section 14(1) is applicable, it destroys the right of reversion. Based on the deposition made by various parties, he would submit that the Will is deemed to have been proved. According to him, the deposition of Venkatasamy Naidu in Criminal Proceedings marked as Ex.B.7 is admissible evidence and the decree passed in previous suit in O.S.No.71 of 1958 or O.S.No.36 of 1963 cannot be treated as res judicata since there was no decision on merit.

32. Mr.V.Raghavachari, learned counsel appearing for the 39th respondent in S.A.Nos.314 and 315 of 1994, who is the legal representative of the 9th defendant in O.S.No.89 of 1983, while adopting the arguments of Mr.T.R.Rajagopalan, learned senior counsel appearing for the appellant in S.A.Nos.314 and 315 of 1994, in addition, would submit that the issue involved in this case is not one of loss of Will, but, on the other hand, there was a specific undertaking that the original will would be produced. According to him, even if the executor's son is unable to produce the Will and if the plaintiff in O.S.No.89 of 1983 is relying upon the proceedings under Section 145 Cr.P.C. in which the Will has been relied upon, nothing prevented the plaintiff to summon the said Will before this Court. On the other hand, there is absolutely no evidence to show that the Will is in existence at all. It is his contention that Section 65(c) of the Indian Evidence Act has no application, since there was no corresponding pleading at all. He would also contend that unless and until the absence of primary evidence is proved, secondary evidence can not be accepted. He would vehemently submit that no steps were taken for recording the evidence of attesting witness. He would also state that the will which has been relied upon clearly shows that the same was executed in the house of Ammani Ammal. On the other hand, it is the case of the plaintiff that the Will was executed in the residence of the testator. If really the Will was executed in the private residence of Ammani Ammal, whether Sub-Registrar came to the said place has not been proved. According to him, even assuming that one of the attesting witnesses Venkatasami was examined in the proceedings under Section 145 Cr.P.C., his evidence has no validity at all for the purpose of proving the genuineness of the Will. According to him, merely because the Will is registered it does not mean that the Will is presumed to have been proved and even then the provisions of the law regarding the proof of Will have to be scrupulously followed. He would submit that in Section 145 Cr.P.C. Proceedings, the Will which is

stated to be marked as Ex.B.68. If that is so, it could have been summoned before the Court and a reference to the said proceedings does not disclose whether Ex.B.68 was original Will or not and in the absence of any such steps taken on the side of plaintiff in O.S.No.89 of 1983, it cannot be said by the plaintiff that the primary evidence was not available and hence, he is entitled to lead secondary evidence. The learned counsel submitted that the division in status cannot be presumed only based on the documents pertaining to the income-tax. It is his further contention that 1932 partition has not been accepted by both the Courts below and therefore, the question of proving the same does not arise. He would submit that a person can be a co-parcener, having a separate income tax assessment. It is also his contention that the learned appellate Judge was not correct to presume the validity of the will.

33. I have heard the learned counsel appearing for all the parties and perused the records. It would be convenient, at the outset, to give the following genealogy which would help to understand the contentions of the parties.

VENKITUSAMY NAIDU

R.V.LAKSH MIAH NAIDU (Died - 5.4.1958) =	V.RANGASA MI NAIDU (died - 1.6.1955) =	RANGANAYAK I AMMAL (Died - 30.4.1977)	THAYAMMAL KRISHNAMM AL	NAGAMMA L	AMMAN I AMMAL (Wido wed siste r)
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A.ALAGIRISAV.KALYANA-R.ALAGIRIS N.R.SOUN
MY SAMY AMY DA-
RAJAN

L.BHAKTHA - VATSALU (Died)	L.VENKITA - PATHY (Died)	L.JAGANNAT HAN	L.RAMASAM Y (Died) = MANICKAMM AL (Wife)
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34. The facts and relationship between the parties as enumerated above are not in dispute. The fact that R.V.Rangasamy Naidu and R.V. Lakshmiah Naidu, being brothers have lived jointly is also not in dispute. What is stated by the plaintiff in O.S.No.89 of 1983 is that between the said two brothers there was an oral partition in the year 1932 and they were enjoying the properties allotted to each of them separately and Item Nos.1 to 3 and 6 to 9 in the suit properties were allotted to the share of R.V.Rangasamy Naidu and Items 4 and 5 were purchased by him long after the partition under three sale deeds. A reference to the judgment of the trial Court as well as the First Appellate Court shows that both the Courts have concurrently found that there is no proof that there was a partition between R.V. Rangasamy Naidu and R.V.Lakshmiah Naidu in the year 1932, and therefore the finding in respect of the said oral partition in the year 1932 by both the Courts below has become final.

35. In such circumstances, the next issue involved in these cases is as to whether there was a division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu, before the death of R.V. Rangasamy Naidu, who admittedly died on 01.06.1955. A reference to the trial Court judgment shows that no issue about the division in status between the brothers before the death of R.V. Rangasamy Naidu was framed in the trial Court. However, the trial Court on the analysis of entire evidence and considering Ex.B.1 filed on behalf of the plaintiff in O.S.No.89 of 1983, which is a publication given by R.V. Rangasamy Naidu in "Nava India" newspaper on 12.05.1955, stating that he has separated himself from the joint family with his brother R.V. Lakshmiah Naidu, has come to the conclusion that it is not sufficient to prove that there was a partition of the properties.

36. On the other hand, the learned First Appellate Judge has framed a specific issue about the plea of division in status based on Ex.B.1 and has arrived at a conclusion that Ex.B.1 itself is sufficient to prove that there was a division in status between the brothers, without any further discussion on the said point. It is the clear case of the plaintiff in O.S.No.89 of 1983 that it was because of the division in status, which took place between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu, R.V. Rangasamy Naidu acquired the right for unilateral allotment of properties and executed a Will on 10.05.1955, conferring life interest to his wife Mrs. Krishnammal and absolute right to the legal heirs of his sisters, viz., plaintiff and defendants 1 to 3 in O.S.No.89 of 1983.

37. As correctly pointed out by the learned senior counsel Mr.T.R. Rajagopalan, appearing for the appellants, the plaintiff in O.S.No.89 of 1983 relies upon Ex.B.1, publication in "Nava India" dated 12.05.1955, while the first defendant in O.S.No.649 of 1985 in the written statement has stated that R.V. Rangasamy Naidu has issued a public notice in "Nava India" on 10.05.1955 stating that he was a divided member from his brother R.V.Lakshmiah Naidu ever since 1932 and for that, a reply notice

dated 11.5.1955 was issued by Lakshmiah Naidu for which a reply was also given by R.V.Rangasamy Naidu. In any event, it is, on facts clear that except the said newspaper "Nava India" dated 12.05.1955, no other document has been filed in the proceedings. Further, the plaintiff relies upon the order passed by the Executive First Class Magistrate in M.C.No.1 and 8 of 1955, which was the proceeding under Section 145 Criminal Procedure Code between the wife of R.V.Rangasamy Naidu, viz., Mrs. Krishnammal and R.V. Lakshmiah Naidu, marked as Ex.B.2. In that proceeding the publication in "Nava India" dated 10.05.1955 made by R.V. Rangasamy Naidu and subsequent letter dated 11.05.1955 stated to have been written by R.V. Lakshmiah Naidu to R.V. Rangasamy Naidu, denying the division in status were relied upon. In the absence of any document produced before the Court and on the contradictory pleadings between the plaintiff and the defendants 1 to 3, who are sailing together regarding publication in "Nava India", there is absolutely no reason to come to the conclusion that there has been any division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu before the death of R.V. Rangasamy Naidu.

38. It is not in dispute that the publication stated to have been effected by R.V. Rangasamy Naidu in "Nava India" itself is on the basis of a previous partition between him and R.V. Lakshmiah Naidu in 1932 and inasmuch as both the Courts below have concurrently held that there was no prior partition between the brothers in 1932 and in the absence of any concrete proof to the effect that R.V. Rangasamy Naidu himself has divided from his brother R.V.Lakshmiah Naidu before his death, the finding of the learned First Appellate Judge as if there was a division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu is baseless. The concept of severance in status among the members of the Hindu joint family can be presumed by unequivocal declaration of intention and enjoyment of the specific share. It is only when he proves that he was a divided member, he will have a right of execution of Will. That apart, the knowledge of the members of the family about the intention of one of them to separate is a necessary condition to bring severance in status. That was the law laid down by the Supreme Court in A. Raghavamma v. A. Chenchamma (AIR 1964 SC 136) in the following words.

" 24. It is settled law that a member of a joint Hindu family can bring about his separation in status by a definite and unequivocal declaration of his intention to separate himself from the family and enjoy his share in severalty.

25.

26.

27. The main question of law that arises is whether a member of a joint Hindu family becomes separated from the other members of the family by his declaration of his unequivocal intention to divide from the family without bringing the same to

the knowledge of the other member of the family. In this context a reference to Hindu law texts would be appropriate, for they are the sources from which Courts evolved the doctrine by a pragmatic approach to problems that arose from time to time. The evolution of the doctrine can be studied in two parts, namely, (1) the declaration of the intention, and (2) communication of it to others affected thereby.

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31. We agree with the learned Judge insofar as he held that there should be an intimation, indication or expression of the intention to become divided and that what form that manifestation should take would depend upon the circumstances of each case. But if the learned Judge meant that the said declaration without it being brought to the knowledge of the other members of the family in one way or other constitutes a severance in status, we find it difficult to accept it. In our view, it is implicit in the expression "declaration" that it should be to the knowledge of the person affected thereby. An uncommunicated declaration is no better than a mere formation or harbouring of an intention to separate. It becomes effective as a declaration only after its communication to the person or persons who would be affected thereby."

39. The same was reiterated in the subsequent decision of the Supreme Court in Potti Lakshmi Perumallu v. Potti Krishnavenamma (AIR 1965 SC 825) in the following words:

" 6. What was held in that case was that a member of a joint Hindu family can bring about a separation in status by a definite and unequivocal declaration of his intention to separate himself from the family and enjoy his share in severalty by expressing such an intention even in a will. It was further held the the knowledge of the expression of intention to separate has to be brought home to the persons affected by it and if that is done it relates back to the date when the intention was formed and expressed. ... "

40. The same was again reiterated in Puttrangamma v. M.S. Ranganna (AIR 1968 SC 1018) as under:

<https://hcservices.ecourts.gov.in/hcservices/> It is now a settled doctrine of Hindu Law that a member of a joint Hindu family can bring

about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. It is not necessary that there should be an agreement between all the coparceners for the disruption of the joint status."

41. Therefore, it is clear from the above judgments that to claim disruption of the joint status, it is not only the manifestation of the intention of a co-parcener to have a division in status, but such an unequivocal intention should also be communicated to the other co-parceners and the property must be enjoyed by division. Applying the said ratio to the factual position as stated above, I am of the considered view that the division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu has not been proved in the manner known to law. The learned First Appellate Judge referred to the publication given by R.V. Rangasamy Naidu on 10.05.1955, which has been marked as Ex.B.1 and that was repudiated by R.V. Lakshmiah Naidu on 11.05.1955, which was again replied by R.V. Rangasamy Naidu on 16.05.1955 and therefore came to a conclusion that the other co-parcener, viz., R.V. Lakshmiah Naidu was communicated about the intention of R.V. Rangasamy Naidu to have a division in status. The finding is not legally tenable. First of all, Ex.B.1 referred to by the First Appellate Judge is not dated 10.05.1955, but it is dated 12.05.1955. That apart, the letter dated 11.05.1955 stated to have been written by R.V. Lakshmiah Naidu and reply letter stated to have been written by R.V. Rangasamy Naidu dated 16.05.1955 have not been filed before the Court. Only in Section 145 Cr.P.C. proceedings marked as Ex.B.2, the said letters were referred as Document Nos.43 and 44. In such a situation and especially when the learned First Appellate Judge has agreed with the learned trial Judge that there was no partition between the brothers in 1932, I am of the considered view that in the light of the judgment of the Supreme Court in Puttrangamma v. M.S. Ranganna (AIR 1968 SC 1018), the finding as if there was a division in status, on the facts and circumstances of the present case is not on proper appreciation of law.

42. It is true that in such a situation, when the partition between the brothers in 1932 was concurrently found against the plaintiff and the division in status between R.V. Rangasamy Naidu and R.V. Lakshmiah Naidu has not been established, it is doubtful as to whether R.V. Rangasamy Naidu had any right at all to execute a Will in respect of his undivided share in respect of coparcenary properties. In any event, it is the specific case of the plaintiff in O.S.No.89 of 1983 that the said R.V. Rangasamy Naidu has executed a Will on 10.05.1955, by which life interest was given to his wife Mrs.Krishnammal and thereafter, absolute right has been given to the legal heirs of the sisters of R.V. Rangasamy Naidu who are the plaintiff and defendants 1 to 3 in O.S.No.89 of 1983. The admitted fact is that the original Will has not been produced before the Court. While the trial Court

has, after a detailed discussion, held that the said Will (registration copy of which was marked as Ex.B.10) is not proved in the manner known to law and is not true, the learned First Appellate Judge has concluded that the Will Ex.B.10 stands proved. It is relevant to point out that in the plaint in O.S.No.89 of 1983, the plaintiff, who has filed the registration copy of the Will has clearly stated about the Will as follows.

"The original Will is with the 12th defendant, who was appointed as Executor under the Will".

It is not in dispute that the 12th defendant who is stated to be the Executor of the Will was alive till 1990 and the plaintiff has not taken any steps to produce the original Will stated to have been executed by R.V. Rangasamy Naidu on 10.05.1955. It is also clear that though the registration book from the Office of the Sub-Registrar was summoned and marked as Ex.X.1, no one was examined to prove the contents and identified the signature therein. It is seen that notice was taken to the son of the Executor, one R.Venkataramani, which was marked as Court document and no further steps seems to have been taken to produce the Will.

43. On the other hand, the plaintiff solely relied upon the order of the learned Executive Magistrate, Coimbatore in the proceedings under Section 145 Criminal Procedure Code dated 16.04.1956, which was marked as Ex.B.2, wherein the Will dated 10.05.1955 of R.V. Rangasamy Naidu is stated to have been marked as Ex.B.68. However, it cannot be said that mere production of any such Will in a proceeding before a Magistrate under Section 145 Crl.P.C. amounts to proving of the said Will. In fact, Ex.B.2 order itself proceeds in the words of the learned Executive Magistrate as follows:

"In view of these I am not discussing about the Will (Ex.P.68) as such a discussion is not necessary for the purpose of this case."

That apart, the plaintiff relies upon the evidence of Venkatasamy Naidu, who is stated to be one of the attesting witness of the said Will, given in the Court of First Class Magistrate in MC.Nos.1 and 8 of 1955. The copy of the said evidence given by Venkatasamy Naidu is marked as Ex.B.7 in the present suit. In his evidence he is stated to have deposed that he was one of the attesting witness of Ex.B.68 Will. If really the said original Will was filed and marked before the Court of Executive Magistrate, Coimbatore in the said Section 145 Cr.P.C. Proceedings, nothing prevented the plaintiff in summoning the said Will before the Civil Court. There is absolutely nothing to show that the plaintiff has taken such efforts to produce the original Will before the Court. In such factual position, the further question to be considered is as to whether the plaintiff is entitled to rely upon Ex.B.10, which is a registration copy of the Will, as a secondary evidence for proving its genuineness.

marked as Ex.B.10 contains an endorsement at the end as if the document was presented for registration in the residence of Ammani Ammal, at Door No.Nil, Race Course, Coimbatore. The said Ammani Ammal is one of the sisters of R.V.Rangasamy Naidu. On the other hand, Ex.B.7, which is a certified copy of the deposition of B.Venkatasamy Naidu in Section 145 Cr.P.C. Proceedings clearly shows that the said Will marked as Ex.B.68 in that proceedings was executed in the house of the deceased, viz., R.V. Rangasamy Naidu, which is situated at Upiliapuram, Coimbatore and the sub-registrar came to the house for the purpose of effecting registration. Such contradiction which is certainly material in the aspect of proving the Will, apart from the maintainability of the evidence, has not been taken note of by the learned First Appellate Judge.

45. Section 63 of the Indian Succession Act, 1925 speaks about the execution of unprivileged Wills, which reads as under:

" 63. Execution of unprivileged Wills. - Every testator, not being a soldier employed in an expedition or engaged in actual warfare (or an airman so employed or engaged) or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. "

The procedure for attesting a Will is explained in detail under Section 63(c) of the Act. As per the said procedure, it is clear that the Will shall be attested by two or more witnesses and each of such witnesses shall see the testator signing or affixing his mark in the Will and each of the witnesses shall sign the Will in the presence of the Testator, even though it is not necessary that more than one witness should be present at the same time.

46. The law of Evidence regarding proof of execution of a document required to be attested is dealt with under Sections 68 and 69 of the Indian Evidence Act, 1872.

" 68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. "

47. It is true that Section 68 of the Indian Evidence Act applies to cases where the attesting witnesses are alive and Section 69 applies to cases where no attesting witnesses are alive. But the question to be considered in these cases is that even if Section 69 is applicable, it must be proved that the attestation of one of the attesting witnesses at least is in his handwriting and that the signature of the person executing the document is proved to be in his handwriting. In the absence of original Will produced before the Court and in the absence of any such evidence as required under Section 69 of the Indian Evidence Act, except the evidence of the attesting witness Venkatasamy Naidu in Section 145 Cr.P.C. Proceedings which was marked as Ex.B.7, it is patently clear that there is no compliance of the requirements under Sections 68 or 69 of the Indian Evidence Act on the facts of the present case. While so, it is not known as to how it is relevant to consider the credibility of the attesting witness, when the requirement of law in respect of proof of execution of the Will requires the evidence of attesting witness to show that the Testator was in a sound state of mind and the Testator has seen the attesting witnesses, who have signed in the presence of the Testator as required under Section 63(c) of the Indian Succession Act and not the credibility of the attesting witnesses. Therefore, the conclusion arrived at by the learned First Appellate Judge as if the attesting witnesses of Ex.B.10 are having high credibility and therefore, there is no reason to disbelieve them, has absolutely no meaning.

48. The Supreme Court categorically laid down the necessity of complying with Section 63 of the Indian Succession Act in respect of proving a Will in *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91 BI in the following words.

"8. To say a will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e. (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the will, or must have seen some other person sign the will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgment of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the will in the presence of the testator.

9. It is thus clear that one of the requirements of due execution of a will is its attestation by two or more witnesses, which is mandatory.

10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. It flows from this section that if there be an attesting witness alive capable of giving evidence and subject to the process of the court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be called for proving due execution of the will as

envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a court of law by examining at least one attesting witness even though the will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63 viz. attestation by two attesting witnesses in the manner contemplated therein, the examination of the other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act.

49. While dealing with the applicability of Sections 69 and 71 of the Indian Evidence Act, where no attesting witness is found or when the attesting witness denies execution, a Division Bench of this Court consisting of K.Govindarajan and M.Thanikachalam, JJ., in Janaki Devi vs. R. Vasantha and others (2005 (1) CTC 11) has held that in such circumstances the law permits for examining someone who is acquainted with the testator and such witness deposing that the signature in the Will is of that attesting witness whose

signature is familiar, holding that Sections 69 and 71 are exceptions to the general Rule contained in Section 68 of the Act. The relevant portion of the judgment of the Division Bench is as follows:

" 19. The Will, Ex.P.1 has to be proved as required under law with regard to Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act, 1872. In certain circumstances, where it is not possible to prove the Will under Section 68 of the Evidence Act, it can be proved as contemplated under Sections 69 and 71 of the Evidence Act. A combined reading of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, makes it clear that a person propounding the Will has to prove that the Will was duly and validly executed. It cannot be done by simply proving the signatures on the Will were that of the attestors, but it must be proved that the attestations were made properly as required by clause © of Section 63 of the Indian Succession Act. Under Section 68 of the Indian Evidence Act, a concession has been made to prove and establish a Will, only by examining one attesting witness, even though the Will has to be attested by two witnesses, mandatorily. But, in his evidence, he has to satisfy the attestation of the Will by him and other attesting witness, in order to prove that there was due execution of the Will. Sections 69 and 71 of the Indian Evidence Act is an exception to the general rule contained in Section 68 of the Indian Evidence Act. Under Section 69 of the Indian Evidence Act, if no attesting witness is found, it can be proved by other evidence that the attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. Section 71 of the Indian Evidence Act is to meet the situation, where it is not possible to prove the execution of a Will by calling the attesting witness, though alive, or when the attesting witnesses have been called, they deny or fail to recollect the execution of the document. In that way, Section 71 of the Indian Evidence Act is incorporated to safeguard the mandatory provisions of Section 68 of the Indian Evidence Act. Section 71 of the Indian Evidence Act is only to give assistance and come to rescue of a party who has taken steps to get attesting witness to give evidence, but he failed or such witness denied or failed to recollect the execution of the Will. This is only with a view to prove the due executed by "other evidence". In support of the above legal position, some useful reference may be made to the following decisions to have the guideline, in testing a Will."

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50. Sections 69 and 71 of the Evidence Act, 1872 are as under:

" 69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

71. Proof when attesting witness denies the execution.- If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

51. Relying upon the judgment in *JankiNarayan Bhoir v. Narayan Namdeo Kadam* [AIR 2003 SC 761], it is contended by the learned senior counsel that Section 71 of the Indian Evidence Act cannot be interpreted to allow a party to give a go-bye to the mandate of Sections 68 and 69 of the Evidence Act and it is only in the nature of safeguarding the mandatory provisions of Section 68.

52. It is, in the above said context, as rightly pointed out by the learned trial Judge, even the said Venkatasamy Naidu, who has given evidence in Section 145 CR.P.C. Proceedings has not stated in that proceedings that the other witness C.S.Ramasamy Iyer signed as attesting witness and R.V.Rangasamy Naidu saw C.S.Ramasamy Iyer signing as attesting witness in the Will and that the evidence of said Venkatasamy Naidu in Section 145 CrI.P.C. Proceedings is not even clear as to whether the R.V. Rangasamy Naidu was in a sound disposing state of mind at the time of the alleged execution of the Will. When that is the basic principle of execution of a Will under Section 63 of Indian Succession Act, I am of the considered view that the finding of the learned First Appellate Judge that the said requirements are not necessary while applying Section 69 of the Indian Evidence Act is not founded on any legal basis.

53. While the legal position about the onus of proof is clear, it is not known as to how the plaintiffs in O.S.No.649 of 1985 can be estopped from raising the validity of the Will. The validity of the Will is to be proved in accordance with law and not based on the admission or denial of any party. In any event, in the earlier suit filed by Mrs.Krishnammal in O.S.No.71 of 1958, even though it was on the basis of the Will dated 10.05.1955 stated to have been executed by R.V. Rangasamy Naidu, it ended in a compromise, there was no occasion for deciding the validity of the Will at that time. In this regard, it is relevant to point out that in O.S.No.71 to 1958, in the list of documents, what was stated to be filed was only a registration copy of the Will with a specific statement "original Will will be produced at the time of hearing".

54. On the other hand, the earlier suit, viz., O.S.No.36 of 1963 filed by the plaintiff in the present suit in O.S.No.89 of 1983, he relied upon the Will of R.V.Rangasamy Naidu dated

10.05.1955 and came to the Court with the pleading that Krishnammal was having only life estate and he along with defendants 1 to 3 in the present suit are entitled to the absolute right and the relief in the said suit was for a declaration that the said Krishnammal was having only a life estate, and he has consciously entered into a compromise by giving up his right in respect of certain properties, which was claimed by him under the said Will. It is also relevant to point out that while it is the case of the plaintiff that the said Will contains many items of properties, he has chosen to file the above said suit only in respect of few items of properties and therefore, it is certainly not open to the plaintiff to go back and to make a claim in respect of other properties. When that is the factual matrix, it is not known as to how the principle of estoppel can be applied against the plaintiffs in O.S.No.649 of 1985 as found by the learned First Appellate Judge.

55. In Bhagat Ram and another vs. Suresh and others (AIR 2004 SC 436), the Supreme Court has held that the registration of a Will does not dispense with the need of proving the execution and attestation of the Will as per the Evidence Act. In that case, while dealing with the Registrar of Deeds as attesting witness, the Supreme Court having found that he must also satisfy the requirement of Section 63(c) of the Indian Succession Act, 1925 held that the registration does not dispense with the need of proving the execution and attestation in the following words:

" 23 . Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. Under Section 58 of the Registration Act the Registrar shall endorse the following particulars on every document admitted to registration:

(1) the date, hour and place of presentation of the document for registration;

(2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(3) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution."

56. The next consequential question would be as to whether

the plaintiff in O.S.No.89 of 1983 has taken any steps to produce the original Will. It is not the case of the plaintiff or defendants 1 to 3 at any point of time that the Will was lost. Consequently, the question arises for consideration as to whether the plaintiff was right in contending that he was entitled to rely upon the secondary evidence, viz., registration copy of the Will marked as Ex.B.10.

57. Section 65 of the Indian Evidence Act contemplates cases where secondary evidence relating to documents may be adduced. The said section reads as follows:

" Section 65. Cases in which secondary evidence relating to documents may be given.-

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power -

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the

document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents. "

58. Applying the provisions of the said section, I am not able to appreciate as to how Ex.B.10 being the registration copy of the Will can be allowed to be relied upon as a secondary evidence, when it is stated in the plaint itself in the present suit, O.S.No.89 of 1983 that the original Will was with the Executor, who was also made as a party, viz., 12th defendant who died during the pendency of the suit. But, till the date of his death, which is stated to be in 1990, the plaintiff has not taken any steps to direct him to produce the original Will. Even after his death, only summons was issued to his son Venkatramani and no further steps have been taken for the production of the Will. As I have stated earlier, even in the suit filed by Mrs.Krishnammal in O.S.No.71 of 1958, it was specifically stated in the plaint that the registration copy of the Will was filed and the original Will would be produced later. Strangely, in Section 145 Cr.P.C. proceedings marked as Ex.B.2, the Will is stated to have been marked as Ex.P.68, whereas on a reading of the entire Ex.B.2 order, one cannot find as to whether Ex.P.68 marked in that proceedings was original Will or not. It is not known as to why the plaintiff has not taken any steps to summon the records in the said Criminal proceedings. All these things would show that it is not the case of the plaintiff that Will was lost or destroyed or unable to be produced for any reasonable cause. On the other hand, there is contradiction in evidence of Venkatasamy Naidu, given in the criminal Court, the deposition of which was marked as Ex.B.7 and the pleadings by defendants 1 to 3 in the present suit, viz., O.S.No.89 of 1983 about the place of execution of the Will. While the endorsement on Ex.B.10 shows that it was executed in the place of Ammani Ammal, the evidence of Venkadasamy Naidu in the criminal proceedings shows that it was in the house of R.V. Rangasamy Naidu. It is unimpeachable and almost acceptable position that R.V. Rangasamy Naidu was not keeping in good health. All these factual position create a suspicion on the validity of the Will certainly necessitating or imposing a heavy onus on the plaintiff to prove the genuineness of the same. The legal position regarding the removal of suspicion on the Will is laid down by the Supreme Court in H. Venkatachala vs. B.S. Thimmajamma (AIR 1959 SC 443), which is reiterated by the Apex Court in Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another (AIR 1962 SC 567) in the following words:

" 5. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise

indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

Therefore, in fact, the trial Court has considered all these aspects and came to the conclusion that the Will has not been proved in the manner known to law. A reversal finding by the First Appellate Court for the above said reasons are not sustainable in law. In view of the same, there is no difficulty to come to the conclusion that the finding arrived at by the learned First Appellate Judge in holding that the Will of R.V.Rangasamy Naidu dated 10.05.1955 stands proved cannot be accepted.

59. The next question which is actually consequential to the above said finding is about the legal right of Krishnammal, widow of R.V. Rangasamy Naidu under the Hindu Succession Act and her competency to enter into a compromise in the previous suits in O.S.Nos.71 of 1958 and 36 of 1963. On the date when R.V.Rangasamy Naidu died, which was on 01.06.1955, the Hindu Succession Act, 1956 has not come into effect. The law applicable at that time was the Hindu Widows Right to Property Act, 1937. As per the said Act, which was applicable to Mrs.Krishnammal at that time, she had only a limited right over the co-parcenary property of her husband, since admittedly, R.V. Rangasamy Naidu was not having a son or daughter. That apart, she had the right of maintenance from the joint family properties and these rights were available to her irrespective of the Will Ex.B.10. Upon the introduction of Hindu Succession Act, 1956, the limited estate of Kirshnammal became absolute by virtue of Section 14 (1) of the Hindu Succession Act,1956, which came into effect from 17.06.1956. By virtue of the said advent of the legal provision, Krishnammal became entitled to the properties under Section 14(1) of the Hindu Succession Act, 1956. In this regard, it is relevant to extract Sections 14 (1) and 14 (2) of the Act.

" 14. Property of a female Hindu to be her absolute property.-

(1) Any property possessed by a female Hindu, whether acquired before or after the

commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section 91) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property. "

60. In fact, in the plaint filed by Krishnammal in O.S.No.71 of 1958 she has clearly asserted her absolute estate in the joint family properties left out by her husband R.V.Rangasamy Naidu and it was in accordance with the said legal right, she had entered into a memorandum of compromise in the said suit on 21.07.1958 as seen from Ex.A.2, by which she has given up her right in respect of other properties belonging to the joint family in favour of the plaintiffs in O.S.No.649 of 1985, who are the legal heirs of R.V. Lakshmaih Naidu, who is the brother of her husband. It is also relevant to point out that as far as Mrs.Krishnammal is concerned, her right as a widow to succeed to the estate of her husband R.V.Rangasamy Naidu opened on 01.06.1955, prior to the coming into force of the 1956 Act.

61. The law on the right of a Hindu widow after the advent of Section 14 of the Hindu Succession Act, has been settled by the Supreme Court in a number of judgments. In fact the terms "possessed" and "acquired" which are found place in Section 14 in respect of limited estate of a Hindu wife under Section 3 of the Hindu Women's Right to Property Act, 1937 came to be interpreted by the Supreme Court in Seth Badri Prasad vs. Srimati Kanso Devi (1969 (2) SCC 586). In that judgment while construing Section 14 (2) of Act 30 of 1956, the Supreme Court has also held that the said Section 14(2) is more in the nature of a proviso or exception to Section 14(1) and the said Section 14(2) is applicable only if the acquisition arose for first time after the Act came into force without there being any pre-existing right. The Supreme Court has held in the said earliest judgment as follows:

narrowed down to this. When a female acquires an interest under the provisions of Act 18 of 1937 in the properties of her husband which are subsequently separated by means of a partition does she become an absolute owner under sub-section (1) of Section 14 of the Act or does she get only a restricted estate under sub-section (2) of that section. The contention of the learned Counsel for the appellant is that the court should first look at sub-section (2) and if the case does not fall within its ambit and scope then alone sub-section (1) will become applicable. This manner of reading of the section is not warranted either on principle or authority. The section has to be read as a whole and it would depend on the facts of each case whether the same is covered by the first sub-section or sub-section (2). The critical words in sub-section (1) are "possessed" and "acquired". The word "possessed" has been used in its widest connotation and it may either be actual or constructive or in any form recognised by law. In the context in which it has been used in Section 14 it means the state of owning or having in one's hand or power (see *Gummalapura Taggina Matada Kotturuswami v. Setra Teeravva* (1959 suppl. 1 SCR 968). In *S.S. Munna Lal v. S.S. Rajkumar* (1962) Suppl. 3 SCR 418) it was held that 1/4th share of a female which had been declared by the preliminary decree passed before the enactment of the Act was possessed by her within the meaning of Section 14 and she became the full owner so that on her death the said property descended to her grandsons in accordance with the provisions of Sections 15 and 16 of the Act. The word "acquired" in sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.

7. Sub-section (2) of Section 14, is more in the nature of a proviso or an exception to sub-section (1). It can come into operation only if

acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property. The Madras High Court was right in the observations made in Rangaswami Naicker v. Chinnammal (AIR 1964 Mad. 387) that sub-section (2) made it clear that the object of Section 14 was only to remove the disability on women imposed by law and not to interfere with contracts, grants or decrees etc. by virtue of which a women's right was restricted.

In Sukhram v. Gauri Shankar (1968 1 SCR) one Kishan Devi had acquired in 1952, the same interest in the property of the joint family which her husband Hukan Singh had under the provisions of Act 18 of 1937. The question arose, whether after the coming into force of the Act she got rights of full ownership and could alienate the properties in which she had acquired a limited interest without the consent of the male members of the family. This Court decided that she had become full owner by virtue of the provisions of Section 14(1) of the Act. This case is quite opposite for our purpose and we must hold that the respondent became a full owner of the suit properties when the Act came into force. The mere fact that there was a partition by means of arbitration which resulted in an award and a decree based on it would not bring the matter within sub-section (2) as the provisions of sub-section (1) became fully applicable particularly in view of the express terms of the Explanation."

62. That was followed by the subsequent judgment in V.Tulasamma and others vs. Sesha Reddy (dead) by L.Rs. (1977 (3) SCC 99), wherein the Supreme Court has held that the ambit and scope of Section 14(1) is wide and Section 14(2) cannot deprive a Hindu female of the protection sought to be given to her by sub-section (1) of section 14, again reiterating that applicability of Section 14(2) is possible only in cases where Hindu female for the first time gets a grant under a gift, Will or instrument etc., without any pre-existing right. The claim of maintenance of a Hindu widow was held to be pre-existing right and therefore covered by Section 14(1) of the Act as follows:

" 62. We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These

conclusions may be stated thus:

(1) The Hindu female's right to maintenance

is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out

of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee." (Emphasis supplied)

63. Again, while dealing with Section 14(1) and 14(2) of the Act, the Supreme Court has held that Section 14(1) has much in its amplitude.

" 68. Since the determination of the question in the appeal turns on the true interpretation to be placed on sub-section (2) read in the context of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, it would be convenient at this stage to set out both the sub-sections of that section which read as follows:

14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of

maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Prior to the enactment of Section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of this restricted interest, there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of Section 14, intended, as pointed by this Court in *S.S. Munna Lal v. S.S. Rajkumar* (AIR 1962 SC 1493) "to convert the interest which a Hindu female has in property, however, restricted the nature of that interest under the Shastric Hindu law may be, into absolute estate". This Court pointed out that the Hindu Succession Act, 1958 "is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate". Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words "any property" are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include "both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage,

or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement" of the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognise her status as an independent and absolute owner of property. This Court has also in a series of decisions given a most expansive interpretation to the language of sub-section (1) of Section 14 with a view to advancing the social purpose of the legislation and as part of that process, construed the words "possessed of" also in a broad sense and in their widest connotation. It was pointed out by this Court in *Gummalapura Taggina Matada Kotturuswami v. Satre Veerayya* (AIR 1959 SC 577) that the words "possessed of" mean "the state of owning or having in one's hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognised by law. Elaborating the concept, this Court pointed out in *Mangal Singh v. Rattno* (AIR 1967 SC 1786) that the section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property. It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. "(Emphasis supplied)

70. It is only when property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub-section

(2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2), as pointed out by this Court in Badri Pershad's case (supra) while quoting with approval the observations made by the Madras High Court in Rangaswami Naicker v. Chinnammal (AIR 1964 Mad.487), is "only to remove the disability of women imposed by law and not to interfere with contracts, grants or decrees etc. by virtue of which a woman's right was restricted" and, therefore, where property is acquired by a Hindu female under the instrument in virtue of a pre-existing right, such as a right to obtain property on partition or a right to maintenance and under the law as it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a "disability imposed by law" would be wiped out and her limited interest would be enlarged under sub-section (1)...."

(Emphasis supplied)

64. The said dictum of the Supreme Court has been reiterated even in the case where, after the death of her husband she lost possession of property on account of transfer effected in favour of alienees in Jagannathan Pillai vs. Kunjithapadam Pillai and others (AIR 1987 SC 1493) as follows:

" 3. The typical facts in the backdrop of which the problem has to be viewed are:

(1) A Hindu female acquired a property, say by reason of the death of her husband, before the commencement of the Act (i.e. before June 17, 1956).

(2) What she acquired was a widow's estate as understood in shastric or traditional Hindu law.

(3) She lost the possession of the property on account of a transaction whereby she transferred the property in favour of an alienee by a registered document of 'sale' or 'gift'.

(4) The property in question was retransferred to her by the said alienee 'after' the enforcement of the Act by a registered document thus restoring to the widow the interest (such as it was) which she had parted with earlier by reversing the original transaction.

will have to be examined as to whether upon the reconveyance of the very property which she had alienated after enforcement of the Act, she would become a full owner in respect of such a property by virtue of Section 14(1) of the Hindu Succession Act, 1956. Be it realized that the law has been settled by this Court that the limited estate or limited ownership of a Hindu female would enlarge into an absolute estate or full ownership of the property in question in the following fact-situation:

(1) Where she acquired the limited estate in the property before or after the commencement of the Act provided she was in possession of the property at the time of the coming into force of the Act on June 17, 1956.

(2) Even if the property in question was possessed by her in lieu of her right to maintenance as against the estate of her deceased husband or the joint family property, she would be entitled to become a full or absolute owner having regard to the fact that the origin of her right was traceable to the right against her husband's estate.

4. The problem which has arisen in the present appeal is in the context of a fact-situation where while the widow acquired a limited estate from her husband she was not in possession on the date of the enforcement of the Act viz. June 17, 1956. But the possession was restored to her upon the original alienee reconveying the property to her.

5. On an analysis of Section 14(1) of the Hindu Succession Act of 1956, it is evident that the legislature has abolished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her as a full owner. Section 14(1) would come into operation if the property (sic) at the point of time when she has an occasion to claim or assert a title thereto. Or, in other words, at the point of time when her right to the said property is called into question. The legal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner. [We are for the moment not concerned with the fact that sub-section (2) of Section 14 which provides that Section 14(1) will not prevent creating a restricted estate in favour of a Hindu female

either by gift or will or any instrument or decree of a civil court or award provided the very document creating title unto her confers a restricted estate on her.] There is nothing in Section 14 which supports the proposition that a Hindu female should be in actual physical possession or in constructive possession of any property on the date of the coming into operation of the Act. The expression "possessed" has been used in the sense of having a right to the property or control over the property. The expression "any property possessed by a Hindu female whether acquired before or after the commencement of the Act" on an analysis yields to the following interpretation:

(1) Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner.

(2) Any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as a limited owner.

Since the Act in terms applies even to properties possessed by a Hindu female which are acquired "after" the commencement of the Act, it is futile to contend that the Hindu female shall be in "possession" of the property "before" the commencement of the Act. If the property itself is acquired "after" the commencement of the Act, there could be no question of the property being either in physical or constructive possession of the Hindu female "before" the coming into operation of the Act. There is, therefore, no escape from the conclusion that possession, physical or constructive or in a legal sense, on the date of the coming into operation of the Act is not the sine qua non for the acquisition of full ownership in property. In fact, the intention of the legislature was to do away with the concept of limited ownership in respect of the property owned by a Hindu female altogether. Section 4 of the Act (it needs to be emphasized) provides that any text, rule or interpretation of Hindu law or custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect of any matter for which provision is made in the Act. The legislative intent is therefore, abundantly loud and clear. To erase the injustice and remove the legal shackles by abolishing the concept of limited estate, or the women's or widow's estate once and for all. To obviate hair-splitting, the legislature has made it abundantly clear that

whatever be the property possessed by a Hindu female, it will be of absolute ownership and not of limited ownership notwithstanding the position obtaining under the traditional Hindu law. Once it is shown that at the point of time when the question regarding title to property held by a Hindu female arises, she was "possessed" of the property on that date, in the eye of law, the property held by her would be held by her as "full owner" and not as "limited owner". In other words, all that has to be shown by her is that she had acquired the property and that she was "possessed" of the property at the point of time when her title was called into question. When she bought the property from the alienee to whom she had sold the property prior to the enforcement of the Act, she "acquired" the property within the meaning of the explanation to Section 14(1) of the Act. The right that the original alienee had to hold the property as owner (subject to his right being questioned by the reversioner on the death of the female Hindu from whom he had purchased the property) was restored to her when she got back the right that she had parted with. Whatever she had lost "earlier", was "now" regained by her by virtue of the transaction. The status quo ante was restored in respect of her interest in the said property. In the eye of law, therefore, the transaction by which the vendee of the Hindu female acquired an interest in the said property was "reversed" and the Hindu female was restored to the position prevailing before the transaction took place. In other words, in the eye of law the transaction stood obliterated or effaced. What was "done" by virtue of the document executed in favour of the transferee was "undone". Such would be the consequence of a retransfer by the alienee in favour of a Hindu female from whom he had acquired an interest in the property in question. Thus on the date on which her right to the property was called into question, she was "possessed" of the property which she had inherited from her husband she having by then re-acquired and regained what she had lost. And by virtue of the operation of Section 14(1) of the Act the limitation which previously inhered in respect of the property disappeared upon the coming into operation of the Act. It is no longer open to anyone now to contend that she had only a "limited" ownership in the said property and not a "full" ownership, the concept of limited ownership having been abolished altogether, with effect from the coming into operation of the Act.

65. The Supreme Court, following the law laid down in Tulasamma case (1977 (3) SCC 99) has affirmed the same in Sakuntla Devi vs. Kamla and others 2005 (5) SCC 390.

" 14. It is to be noticed that in the present case when the first declaratory decree was obtained, on the basis of the law as it stood then, the right of Uttamdassi remained a limited right in the suit property. Hence, a declaratory decree was given in favour of the plaintiffs in that suit; but by the time the second declaratory decree was obtained by the appellant herein, this Court by the judgment in V. Tulasamma case 4 had declared the law under Section 14 of the Hindu Succession Act holding that the estate of persons similarly situated as Uttamdassi got enlarged and a beneficiary under a Will with limited rights became the absolute owner of the same. Since the judgment of this Court in Tulasamma case 4 was the law on that date and is the law currently, the second declaratory decree was contrary to the said declaration of law made by this Court. Therefore, that declaration cannot be of any use to the appellant in view of the law laid down by this Court in Mathura Prasad case 6 as extracted hereinabove. "

66. On the factual situation, it is not in dispute that on the date of death of R.V.Rangasamy Naidu, his wife Krishnammal was definitely having right of maintenance over the estate of her husband along with his brother's family and it is that right which got enlarged into an absolute one after the 1956 Act came into existence and therefore, there is absolutely no difficulty to come to the conclusion that Kirshnammal was having a pre-existing right over the property and that can never be restricted by virtue of Section 14(2) of the Hindu Succession Act.

67. On the other hand, the judgment relied upon by Mr.G.Masilamani, learned senior counsel appearing for the respondents has no application. Sadhu Singh vs. Gurudwara Sahib Narike and others[2006 (8) SCC 75] was a case where the husband who had acquired some property has executed a Will in favour of his wife on 07.10.1968 and subsequently died on 19.03.1977 and thereafter, his widow has gifted the property in favour of Gurudhuvara on 21.01.1980. When a question arose as to the restriction imposed upon the widow by her husband under the Will dated 7.10.1968, after the commencement of Act 30 of 1956, the Supreme Court has applied Section 14(2) of the Act and held that by virtue of the Will, the wife gets a limited life estate and therefore that should act as a restriction under section 14(2). Therefore, on the facts of the said case in respect of the properties acquired by her husband, on the date of commencement of the Hindu Succession Act, 1956, she cannot be deemed to be in possession of the said properties, since her right itself has come

to existence on 7.10.1968 by virtue of the Will which imposes restriction. In fact, even in the said case, the Supreme Court has held that the ratio in Thulasamma case (cited supra) will apply in cases where a Hindu female was in possession of the property on the date of the Act and had a semblance of right whether it is limited or pre-existing in the following words:

" 6. Learned counsel for the respondent relied heavily on the decision in V. Tulasamma v. Shesha Reddy (1977 (3) SCC 99). To understand the ratio of that decision, it is necessary to notice the facts that were available in that case. The husband of Tulasamma had died in the year 1931 in a state of jointness with his stepbrother, leaving Tulasamma as his widow. Tulasamma approached the court in the year 1944 claiming maintenance against the stepbrother of her husband. Her claim was decreed. She put the decree in execution and at the stage of execution, on 30-7-1949, a compromise was entered into. Under the compromise, Tulasamma was allotted the properties but she was to enjoy only a limited interest therein, with no power of alienation. Tulasamma alienated the property, a portion by way of lease and another portion by way of sale. These transactions were challenged by Shesha Reddy on the ground that Tulasamma had only a restricted estate under the terms of the compromise and her interest could not be enlarged into an absolute estate by virtue of Section 14(1) of the Act in view of Section 14(2) of the Act. The alienees from Tulasamma pleaded that the estate Tulasamma possessed as on the date of the coming into force of the Act had ripened into an absolute estate in view of Section 14(1) of the Hindu Succession Act and Section 14(2) cannot be invoked to restrict her right. It was in that context that this Court held that it was a case where Tulasamma possessed the property on the date of the coming into force of the Act as a limited owner having acquired the same by virtue of a compromise and in the light of the Explanation to sub-section (1) of Section 14, it was a case to which Section 14(1) applied and Section 14(2) could not be relied on to override the effect of Section 14(1). The Court held that Tulasamma had a pre-existing right in the properties of the joint family since she had a right to be maintained and it was in view of that pre-existing right and the decree obtained by her in that case that the compromise came into existence and she was put in possession of the property involved in that suit. The properties were to revert to the stepbrother of her husband after the death of Tulasamma. Tulasamma was thus

in possession of the property on the day the Hindu Succession Act came into force. Thus, she was a Hindu female who possessed the property at the commencement of the Act but with a restricted right under a compromise. It was therefore a case where a female Hindu possessed the property on the date of the Act in which she had a pre-existing right though limited and in such circumstances Section 14(1) had operation to convert her limited estate into an absolute one and Section 14(2) could not be relied on for taking the case out of Section 14(1) of the Act on the basis that the property was put in her possession on the basis of a compromise.

7. Now, it is clear from the section and implicit from the decisions of this Court, that for Section 14(1) of the Act to get attracted, the property must be possessed by a female Hindu on the coming into force of the Hindu Succession Act. In *Mayne on Hindu Law*, 15th Edn., p. 1171, it is stated:

"On a reading of sub-section (1) with Explanation, it is clear that wherever the property was possessed by a female Hindu as a limited estate, it would become on and from the date of commencement of the Act her absolute property. However, if she acquires property after the Act with a restricted estate, sub-section (2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award."

8. In *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva* (AIR 1959 SC 577) this Court quoted with approval (at SCR pp. 977-78) the following words of Justice P.N. Mookherjee, in *Gostha Behari Bera v. Haridas Samanta* (AIR 1957 Cal.557) (AIR at p. 559, para 12):

"The opening words 'any property possessed by a female Hindu' obviously mean that, to come within the purview of the section, the property must be in possession of the female concerned at the date of commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form, recognised by law, but, unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word 'possession' in its widest connotation, when the Act came into force, the section would not apply."

and added: (SCR p. 978)

"In our opinion, the view expressed above is the correct view as to how the words 'any property possessed by a female Hindu' should be interpreted."

9. In *Eramma v. Verrupanna* (AIR 1966 SC 1879) this Court emphasised that the property possessed by a female Hindu as contemplated in the section is clearly the property to which she has acquired some kind of title whether before or after the commencement of the Act and negatived a claim under Section 14(1) of the Act in view of the fact that the female Hindu possessed the property on the date of the Act by way of a trespass after she had validly gifted away the property. The need for possession with a semblance of right as on the date of the coming into force of the Hindu Succession Act was thus emphasised.

10. In *Dindayal v. Rajaram* (1970 (1) SCC 786) this Court again noticed that: (SCC p. 789, para 7)

"Before any property can be said to be 'possessed' by a Hindu woman, as provided in Section 14(1) of the Hindu Succession Act, two things are necessary (a) she must have had a right to the possession of that property and (b) she must have been in possession of that property either actually or constructively."

This Court relied on the decisions in *S.S. Munna Lal v. S.S. Rajkumar* (AIR 1962 SC 1493) and *Kuldip Singh v. Surain Singh* (1968) 79 Punj. LR 30.) in support.

11. On the wording of the section and in the context of these decisions, it is clear that the ratio in *V. Tulasamma v. Shesha Reddy* (1977 (3) SCC 99) has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. *Tulasamma* (1977 (3) SCC 99) ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in *Raghubar Singh v. Gulab Singh* (AIR 1998 SC 2401) wherein the testamentary succession was before the Act. The widow had obtained possession under a will. A suit was filed challenging the will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the

property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In *Karmi v. Amru* (AIR 1971 SC 745) the owner of the property executed a will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in *Bhura v. Kashi Ram* (1994 (2) SCC 111) after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In *Sharad Subramanyan v. Soumi Mazumdar* (2006 (8) SCC 233) this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in *Tulasamma* (1977 (3) SCC 99). Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or

other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

12. When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, his heirs as per the Schedule, take it in terms of Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17-6-1956 leaving his widow as his sole heir, she gets the property as Class I heir and there is no limit to her estate or limitation on her title. In such circumstances, Section 14(1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14(1) of the Act, she gets an absolute estate.

13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be inoperative in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the

case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression "property possessed by a female Hindu" occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance."

(Emphasis supplied)

68. Therefore, apart from the fact that the facts of the said case are different and distinguished, it is clear in that case that the grant was given for the first time after the commencement of the Act. Even then as enumerated above, the Supreme Court, has distinguished the judgment in Tulasamma case (1977 (3) SCC 99). In the present case, it is not in dispute that Krishnammal was having a pre-existing right over the estate of her husband in respect of her maintenance and other rights before the commencement of the Act 30 of 1956, which got enlarged into absolute right under Section 14(1) of the Act. It was by virtue of her right the compromise was entered into in O.S.No.71 of 1958 and the same has been impliedly recognised by the plaintiff in O.S.No.89 of 1983 itself who has filed a suit in O.S.No.36 of 1963 which has also ended in compromise. Therefore, it can never be said that the right of Mrs.Krishnammal was restricted under Section 14(2) of the Act and the compromise decree entered should be ignored.

69. In such circumstances, looking the matter in any angle, the decision arrived at by the learned first appellate Judge by setting aside the judgment and decree of the trial Court cannot be sustained in law. In view of the same, all the second appeals stand allowed with costs to the appellant throughout and the judgment and decree of the first appellate Court dated 26.11.1993 in A.S.Nos.194 & 195 of 1989, 20 & 225 of 1992 and 194 of 1989 on the file of First Additional District Judge, Coimbatore are set aside and the substantial questions of law are answered accordingly in favour of the appellants. Consequently, the judgment and decree of the trial Court are confirmed.

Sd/-
Asst. Registrar.

/true copy/

To

1. The Ist Additional District Judge,
Coimbatore.

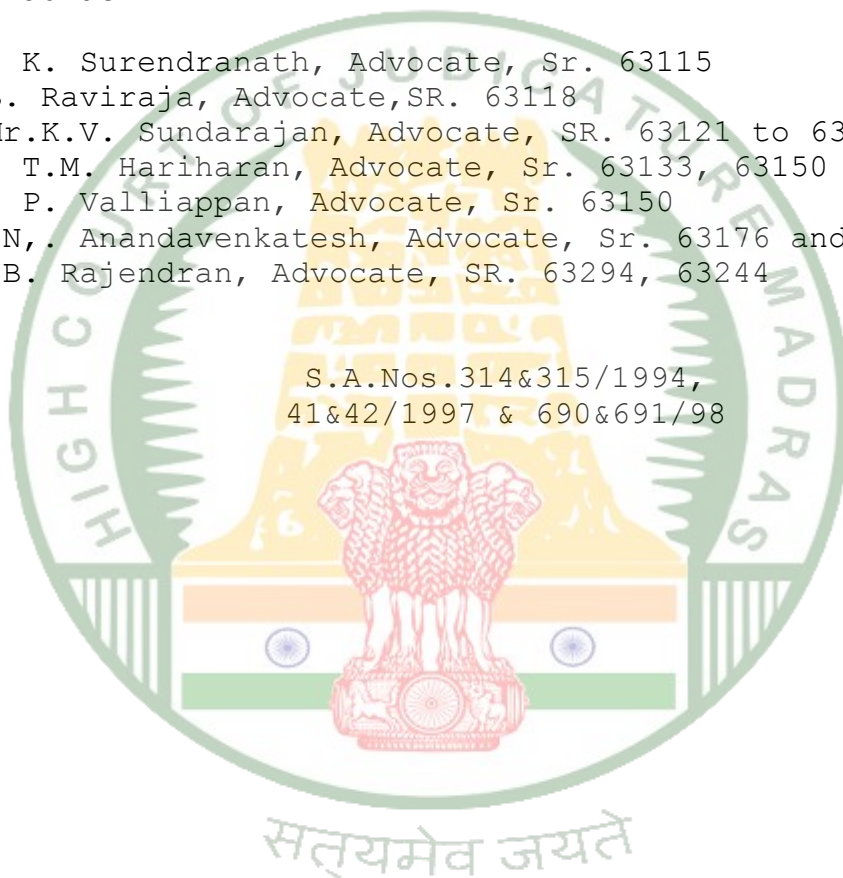
2. The II Additional Subordinate Judge,
Coimbatore.

3. The Section Officer
VR Section
High Court, Madras

1 cc to M/s. K. Surendranath, Advocate, Sr. 63115
1 cc to Mr.B. Raviraja, Advocate, SR. 63118
5=6 ccs to Mr.K.V. Sundarajan, Advocate, SR. 63121 to 63126
1 cc to M/s. T.M. Hariharan, Advocate, Sr. 63133, 63150
1 cc to M/s. P. Valliappan, Advocate, Sr. 63150
2 ccs to Mr.N,. Anandavenkatesh, Advocate, Sr. 63176 and 63177
6 ccs to Mr.B. Rajendran, Advocate, SR. 63294, 63244

S.A.Nos.314&315/1994,
41&42/1997 & 690&691/98

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